More than 1,000 members of the legal community gathered at the Massachusetts Bar Association’s 2017 Annual Dinner on May 4, to celebrate a slate of honorees and hear the fascinating insights into the U.S. Supreme Court from CNN senior analyst and best-selling author Jeffrey Toobin, who gave the keynote speech.

At the beginning of the evening, MBA President Jeffrey N. Catalano addressed the sold-out crowd at the Westin Boston Waterfront by acknowledging the numerous civic engagement efforts that members of the MBA have assisted with over the past year, including its Leadership Academy; programs like the Judicial Youth Corps, Tiered Community Mentoring and Mock Trial; and the MBA’s MassBar Beat podcast, launched during his year.

“[There are many fingerprints all over the great work we do. So many of you have put the interest of others before yourself. And I deeply appreciate that],” Catalano said. “[One thing that I’ve learned is that Massachusetts lawyers, legislators and judges never stop proving what we’re capable of].”

Catalano segued into introducing the award recipients, saying that “[sometimes we worry about whether we are giving out too many awards at these ceremonies. Let me be very frank about this — I don’t think we spend enough time celebrating each other].”

INSPIRING HONOREES AND SUPREME COURT INSIGHTS MARK 2017 ANNUAL DINNER

BEY MALEA RITZ

READ MORE ABOUT THE ANNUAL DINNER, PAGES 14-19

COMCOM CONFERENCE FEATURES BENCH-BAR PANELS

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Continue to lead with us

The following is an excerpt from President Jeffrey N. Catalano’s speech at the MBA’s Annual Dinner on May 4. It has been a true honor to serve as the MBA president this year. My presidency has been the sum of the amazing people who have supported me. I deeply appreciate the advice and support of my fellow officers Chris Sullivan, Chris Kenney, John Morrison and Denise Murphy, along with Marty Healy and the staff at the MBA. I am also thankful for my firm Todd & Weld for their backing. And I am especially grateful to my wonderful wife Elizabeth and terrific kids Zach and Tessa for their encouragement.

Before I started this year as president, former MBA President and good friend Leo Boyle cautioned me to expect the unexpected. That turned out to be quite prophetic. These turbulent political times presented me and the MBA with more opportunities and obligations for civic engagement than I truly could have expected. But where many see our society as deeply divided, I see exciting opportunities for all of us to become more invested in our justice system as a voice for fairness and equality. Whatever our political persuasion, everyone is fighting to protect these two core principles. And the MBA is giving new life to these words by inspiring colleagues and well-informed participation.

I started my year by asking all of you to “join us in leadership,” and so many of you have answered the call. Some of you have launched and participated in our successful new Leadership Academy. This program nurtures future impressive leaders who will listen, collaborate, and inspire. Very many have helped mentor high school students through our Judicial Youth Corps, Tiered Community Mentoring and Mock Trial programs, which create, collaborate, and inspire. Very many have helped mentor high school students through our Juvenile & Child Welfare Section. There are many fingerprints all over the great work we do. So many of you have put the interest of others before yourself. And I deeply appreciate that.

But we are not done yet. We are now working hard to expand free and affordable legal representation to low-income people across the state. The doors of justice are still shut to so many fellow citizens who lack the ability to afford a lawyer. There are many fingerprints all over the great work we do. So many of you have put the interest of others before yourself. And I deeply appreciate that.

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CALENDAR OF EVENTS
FOR MORE INFORMATION, VISIT MASSBAR.ORG/EVENTS/CALENDAR

June

Wednesday, June 14
Demystifying the BMC: A Behind-the-Scenes Look at the Boston Municipal Court
8:30 a.m.-2 p.m.
Boston Municipal Court, Edward W. Brooke Courthouse,
24 New Chardon Street, 5th Floor., Boston

Wednesday, June 14
Let’s Do Lunch: LPM’s Guide to the Legal Galaxy – Techno Mind Meld
A Roundtable Discussion on Taming the Technological Tiger in a Law Office
Noon-1:30 p.m.
MBA, 20 West St., Boston

Thursday, June 14
Probate Litigation: A View from the Bench and Bar
4-7 p.m.
MBA, 20 West St., Boston

Thursday, June 22
“Welcome to Summer” Ice Cream Social
5-7 p.m.
MBA, 20 West St., Boston

July

Wednesday, July 5
MBA Monthly Dial-A-Lawyer Program
5:30-7:30 p.m.
Statewide dial-in #: (617) 338-0610

Wednesday, July 12
Summer Social II
5-7 p.m.
Storrowton Tavern, 1305 Memorial Ave., West Springfield

Thursday, July 13
Practicing with Professionalism
8:30-4:30 p.m.
MBA, 20 West St., Boston

Thursday, July 13
Summer Social III
5:30-7 p.m.
Hyatt Regency Boston, 1 Avenue de Lafayette, Boston

August

Wednesday, August 2
MBA Monthly Dial-A-Lawyer Program
5:30-7:30 p.m.
Statewide dial-in #: (617) 338-0610

Thursday, August 17
Summer Social IV
5:30-7 p.m.
MBA, 20 West St., Boston

Friday, August 25
End of Summer Boat Cruise
6-8 p.m.
200 Seaport Blvd. #75, Boston

REAL-TIME WEBCAST AVAILABLE FOR PURCHASE THROUGH MBA ON DEMAND AT WWW.MASSBAR.ORG/ONDEMAND

INDICATES RECORDED SESSION AVAILABLE FOR PURCHASE (AFTER LIVE PROGRAM) THROUGH MBA ON DEMAND AT WWW.MASSBAR.ORG/ONDEMAND.
School of Thought

Tips for managing the OCI process

By Jeffrey Morlend

As second semester wraps up, many 1Ls begin to think about the infamous off-campus interview (OCI) process that awaits them this summer. Below are a few tips on how to successfully prepare for and manage this process.

Preparation. Before applying to just any firm on your school’s OCI list, consider where you want to live after law school. Unlike other professions, it isn’t as easy for lawyers to move around from state to state. While the new Uniform Bar Exam has certainly made relocation easier for lawyers, not every state has signed up to accept the UBE, so you may find yourself taking another bar exam if you decide to move across state lines in the future. As a result, other than for applications to firms in a city, such as New York, tailor your resume and cover letter accordingly, and don’t be afraid to let your potential employer know in your cover letter the reasons you plan to be in that area after you graduate.

Firms. Many students know from day one that they want to go into Big Law, but that certainly isn’t for everyone. If you’re unsure of whether you want to be working with hundreds, or potentially thousands, of other attorneys at the same firm, consider focusing your search instead on mid-size firms, boutique firms or Big Law firms that have smaller offices in the locations in which you are looking.

Once you’ve decided the type of firm to which you want to apply, consider the area of law in which you want to practice. Some of you may know without any hesitation which practice area you want to pursue. Others of you may know that you’re more interested in transactional law than litigation, but still haven’t figured out exactly what it is you want to do. The remainder of you still have no idea what it is you want to do — after all, you only have one year of law school under your belt.

Whatever category you fall into, you should consider where you are on that spectrum when applying to firms, because some firms require you to pick an area of law that you want to be in after you graduate. That’s certainly not for everyone. If you’re unsure of whether you want to be working with hundreds, or potentially thousands, of other attorneys at the same firm, consider focusing your search instead on mid-size firms, boutique firms or Big Law firms that have smaller offices in the locations in which you are looking.

If you’re going to be spending countless hours at a firm, odds are you are going to want to be around people you can connect with and get along with well. The interviewer, so be sure to have at least two questions prepared for each person with whom you will meet. A good rule of thumb is to ask one question about the firm generally and one question about that person’s particular practice. Avoid questions that you could get answers to simply by looking at the firm’s website, and ask substantive questions.

Questions. While in your interview, be sure to have answers ready if asked why you are interested in that particular geographical area and that particular firm. In addition, on-campus interviews are oftentimes filled with time for you to ask questions of the interviewer, so be sure to have at least two questions prepared for each person with whom you will meet. A good rule of thumb is to ask one question about the firm generally and one question about that person’s particular practice. Avoid questions that you could get answers to simply by looking at the firm’s website, and ask substantives questions. OCI can be a daunting process, but if you get a head start and follow these tips, you will hopefully be a successful and rewarding experience for you. Remember, just as much as these firms are interviewing you, you are also interviewing them. Best of luck!

Jeffrey Morlend is an attorney in the Corporate and Capital Markets practice groups at Sullivan & Worcester LLP in Boston, where he is actively involved in the hiring and recruitment processes. He is also a lecturer in the first year legal writing program at Boston University School of Law and is a member of the board of directors of the Massachusetts Bar Association, Young Lawyers Division.

Bench, Bar discuss implicit bias in jury selection

The MBA hosted a CLE program on How to Identify Implicit Bias in Jury Selection Through Voir Dire on March 22 in Boston. The program included a presentation on implicit bias by U.S. District Court Judge Mark W. Bennett of the Northern District of Iowa. (pictured above, far right) and a panel discussion including four judges from the Massachusetts Superior Court. Panelist images, from left: Francis J. (Jay) Lynch III; Mark L. Breakstone, Hon. Shannon Frison, Hon. Peter B. Krupp; Hon. Janet L. Sanders; MBA Vice President John Morrissey, Hon. Gregg J. Pasquale and Bennett.

ASSOCIATED PRESS

Legal News

News from the Courts

O’Toole Jr. to become senior judge of U.S. District Court

Judge George A. O’Toole Jr. of the United States District Court of the District of Massachusetts has advised President Trump that he will become a Senior Judge as of Jan. 1, 2018. O’Toole received his commission from President William Clinton in 1995.

“When Judge O’Toole became a federal judge in 1995, he brought to our court a wealth of experience as a state judge, as well as a private litigator,” Chief Judge Pati Baris said. Throughout his career, he has epitomized the learned, careful, fair-minded judge. He has presided over some of the District’s most difficult cases, including most prominently the Boston Marathon bombing trial. Luckily for all of us, Judge O’Toole will continue to serve as a senior judge on the court.”

Throughout his tenure on the court, O’Toole has been active in judicial administration. At the local level, he has served at various times as the court’s liaison judge to the magistrate judges, the pretrial services office, the pro se bar associations and similar organizations. He is a member of the U.S. Courts, the Federal Judicial Center, law schools, bar associations and similar organizations. He is a member of the court’s internal committee on information technology. At the national level, he has served as a member of the Judicial Conference Committee on Caseload Planning and Facilities (1999 to 2005) and Committee on Judicial Security (2005 to 2007). He is currently a member of the Committee on the Administration of the Magistrate Judges System.

O’Toole has been a frequent participant and presenter at educational panels sponsored by the Administrative Office of the U.S. Courts, the Federal Judicial Center, law schools, bar associations and similar organizations. He is a member of the Boston Intellectual Property American Inn of Court, currently serving as its vice president.

Prior to joining the federal bench, O’Toole served as an associate justice of the Massachusetts Superior Court (1990 to 1995) and the Boston Municipal Court (1982 to 1990). Before that he was engaged in the private practice of law as a litigator with the Boston firm of Hale and Dorr, now WilmerHale. He is a graduate of the Harvard Law School. He earned his baccalaureate degree from Boston College.

Conrad reappointed federal public defender for the districts of Massachusetts, New Hampshire and Rhode Island

Chief Judge Jeffrey R. Howard of the United States Court of Appeals for the First Circuit announced that Miriam Conrad has been reappointed to a fourth term as federal public defender for the districts of Massachusetts, New Hampshire and Rhode Island.

Conrad has served as federal public defender since 2005. Before her appointment to this role, she served as an assistant federal public defender in the Massachusetts office from 1992 to 2005. Conrad received her J.D. from Harvard Law School in 1987.

First Circuit Court of Appeals Judge David J. Barron, chair of the Reappointment Committee, stated that “The First Circuit Court of Appeals is confident that Ms. Conrad will continue to serve expertly the Districts of Massachusetts, New Hampshire, and Rhode Island as Federal Public Defender.”

Howard expressed his gratitude to Barron for serving as chair of the committee. The chief judge also sincerely thanked Professor Ronald Sullivan Jr. of Cambridge, Massachusetts; Jaye Rancourt of Manchester, New Hampshire; Kata Hoops Mannosh, of Warwick, Rhode Island, and Susan Goldberg, circuit executive, for their efforts as members of the committee.

SJC approves amendments to Rule 55 (b) (4) of the Mass. Rules of Civil Procedure

The Supreme Judicial Court has approved amendments to Rule 55 (b) (4) of the Massachusetts Rules of Civil Procedure, effective May 1. Visit http://www.mass.gov/courts to view the amendments.

Judicial performance evaluations begin for judges in Berkshire, Franklin, Hampshire and Hampden counties

Judges in the District Court, Superior Court, Juvenile Court, Probate and Family Court, and Housing Court in Berkshire, Franklin, Hampshire and Hampden counties will be evaluated through June. Members of the bar should receive an email asking for participation in the Judicial Performance Evaluation. Full participation of the bar in judicial evaluation is crucial to maintaining a high-quality judicial branch.

This evaluation system is the best way for members of the bar to tell the judge and court leadership about their experiences before the judge. Responding attorneys will remain anonymous.

For more information please contact Mona Hochberg, coordinator of Judicial Performance Evaluation, at mona.hochberg@jud.state.ma.us.
MAURNEEN E. CURRAN graduated from Merrimack College (summa cum laude) in 1988 and from Boston College Law School in 1991. Prior to her graduation, Curran had been a court reporter for almost 20 years. Since her graduation, she has been a trial attorney, first at Conn, Kavanaugh, Rosenthal, Peisch & Ford from 1991 through 1996, and then at Hemenway & Barnes from 1996 to 2005. In February 2005, Curran opened her own law practice, the Law Office of Maureen E. Curran LLC, where she concentrates her practice in the area of probate litigation. She handles cases involving will contests, undue influence, competency issues, breach of fiduciary duty related to wills and trusts, contested accounts, and guardianships. She also serves as a court appointed guardian ad litem.

Curran is a member of the Massachusetts Bar Association Probate Law Section Council. She also has co-chaired the Probate Litigation Practice Group for the council. For several years, Curran was an adjunct lecturer and litigation specialist for a pretrial litigation course at Boston College Law School. She also served on the Boston College Law School Alumni Association, last serving as its president in 2006.

**Faculty Spotlight**

Name: Maureen E. Curran, Esq.
Firm: Law Office of Maureen E. Curran LLC, Boston
Program Chair: Probate Litigation: A View from the Bench and Bar

**UPCOMING MBA CLE**

**WEDNESDAY, JUNE 21**
Probate Litigation: A View from the Bench and Bar
4–7 p.m., MBA, 20 West St., Boston
Faculty: Maureen Curran, Esq., program chair; Kevin Diamond, Esq.; moderator: Hon. George F. Phelan, Cara Daniels, Esq.

**THURSDAY, JUNE 22**
Criminal Record Sealing and Pro Bono Opportunities: CORI Matters—Learn How to Help Clients Seal Criminal Records
4:30–6:30 p.m., MBA, 1441 Main St., Suite 925, Springfield
Faculty: Pauline Quirion, Esq., program chair; William Travaan Bailey, Esq.

Register online at MassBar.org/Education or call (617) 338-0530.

**FIND THESE PROGRAMS AND MORE AT MASSBAR.ORG/ONDEMAND**

- Nuts and Bolts of Workers’ Compensation (Recorded April 4)
- Estate Planning 101 Series Part II: How to Probate an Estate (Recorded April 11)
- Let’s Do Lunch: LPM’s Guide to the Legal Galaxy—Using Video Marketing to Attract More Clients (Recorded April 12)
- Probate Litigation (Recorded April 13)
- Mediation & Arbitration Essentials Part III (Recorded April 18)
- Arbitration: Spotlight on Evidence (Recorded April 24)
- Abytical Assets in Divorce (Recorded April 26)
- Lifecycle of a Business Part II: Cybersecurity (Recorded April 27)
- Legal Chat: Understanding Psychological Vulnerabilities of Divorcing Clients and Their Long-term Impact on Children (Recorded May 16)
- Affordable Housing Law and Policy: Tax, Financing, Development and Access to Justice Perspectives (Recorded May 16)
- Lifecycle of a Business Part III—Non-Disclosure Agreements and Non-Compete Agreements (Recorded May 18)

Check out these MBA On Demand programs you may have missed and view them anytime, anywhere ... FREE with your MBA membership.

**SAVE THE DATE**

**27TH ANNUAL FAMILY LAW CONFERENCE**
Friday, Oct. 13–Saturday, Oct. 14
Sea Crest Beach Hotel
350 Quaker Road, North Falmouth
Visit MassBar.org for details.
March HOD meeting features Trial Court update

The March meeting of the Massachusetts Bar Association’s House of Delegates (HOD) featured a guest address from Trial Court Chief Justice Paula Carey, a vote on a Probate Law Section Council motion and several reports on ongoing MBA activities.

MBA President Jeffrey Catalano began the meeting by recounting his recent discussions with court and legislative leaders, and shared some of his thoughts on the importance of Housing Court. He highlighted several upcoming program sessions and the MBA’s Annual Dinner on May 4, and also provided an update on the MBA’s Leadership Academy and its training on Access to Justice.

During his report, MBA Chief Legal Counsel and COO Martin Healy described the MBA’s participation on a CORI-reform forum at the John Adams Courthouse, co-hosted with MassINC and the Federal Reserve Bank. Turning toward the state budget, Healy said the MBA was focused on advocating for adequate funding for the courts, and he encouraged HOD members to continue to call on their local legislative leaders and their constituents to support the court and its budget, where she said funding is needed for the specialty courts and to make the court system more user friendly through technology upgrades. The Trial Court chief justice also announced the expansion of limited assistance representation to Superior Court and spoke about the upgraded court recording system.

Vice President John Morrissey then discussed the MBA’s first program on eliminating bias, which focused on using voir dire to identify implicit bias in jury selection. He said additional programs to address other areas of bias were expected to round out this CLE series. During the Probate Law Section Council report by Peter Shapland and Colin Korzec, the HOD voted to approve in principle the Revised Uniform Fiduciary Access to Digital Assets Act, which addresses management of online assets.

Several other reports were given at the May meeting, including:

- A presentation about their service. HOD members also voted to:
  - Support Resolution Section Council Chair Brian Jerome talked about the DR Section’s inaugural reception, its outreach programs to law schools and its first-ever Dispute Resolution Symposium conference scheduled for May 19.
  - Support, in principle, An Act to Redistribute assets. The Chancellor’s Office was not opposed to careers within the court system.
  - Support, in principle, a vote three members to join the Executive Management Board for the 2017–18 year: Anthony Benedetti, Melissa Juárez and Damian Turco.

Timely resolutions, presentations mark May HOD meeting

The last House of Delegates (HOD) meeting of the 2016-17 membership year featured the adoption of several timely resolutions, plus an award to the state’s first public law school and a presentation on courtroom recordings.

MBA President Jeffrey Catalano kicked off the May HOD meeting by recapping some of the highlights of the year, including the launch of the MBA’s Leadership Academy, the start of the MassBar Beat podcast, and the adoption of the MBA’s immigration resolution from January. HOD members gave Catalano a standing ovation in recognition of his leadership this year.

Following a court budget update and report from MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy, Catalano invited 2017 MBA Officers—Adelheid Holmes Jr. Scholarship winner Shavya Mombuleur to share a few words about her experiences at the University of Massachusetts School of Law in Dartmouth. It was a fitting segue into the presentation of the MBA’s Public Service Award to UMass School of Law Dean Eric Mitsnick, in recognition of the school’s demonstrated commitment to public service.

Representatives from digital recording company For the Record, which is providing digital court recording and content management solutions for the Massachusetts Trial Court, then gave a presentation about their service. HOD members got to hear a recording from a Housing Court session in Worcester taken earlier the same day.

HOD Business

The HOD adopted five criminal justice resolutions put forth by the Criminal Justice Working Group, a collaboration between the Civil Rights and Social Justice and Criminal Justice section councils. The resolutions addressed:

- Finxes, fees, and bail: A series of recommendations to avoid incarceration, pretrial detention, or imposition of less favorable conditions on defendants in criminal cases solely due to their poverty or low income.
- Conviction Integrity Units: A series of recommendations to promote establishment of conviction integrity programs in D.A.’s offices to prevent and remedy wrongful convictions of innocent persons.
- Forensic drug lab reform: A series of recommendations for reform of forensic laboratories relied upon by law enforcement and the courts in light of the recent drug lab scandals.
- Enhanced data collection: A series of recommendations to enhance data collection to keep communities safe, prevent discrimination, foster trust in the criminal justice system, and help protect law enforcement from unfounded claims of racial or gender profiling.
- Body worn police cameras: A series of recommendations to encourage law enforcement agencies and departments to use and be trained on use of body worn cameras.

HOD members also voted to:

- Support, in principle, An Act to Reduce the Criminalization of Poverty. (S.777 and H.2359), introduced by the Dispute Resolution Section and the Civil Rights & Social Justice and Access to Justice section councils; and
- Support a resolution proclaiming that the MBA celebrate Conflict Resolution Day (Oct. 19, 2017) and Conflict Resolution Week (Oct 16-20, 2017), introduced by the Dispute Resolution Section.

In addition, HOD members selected by vote three members to join the Executive Management Board for the 2017-18 year: Anthony Benedetti, Melissa Juárez and Damian Turco.
FROM THE MEMBERSHIP CORNER

Join Us!

THURSDAY, JUNE 22, 5–7 P.M.
“Welcome to Summer” Ice Cream Social
MBA, 20 West St., Boston
RSVP: MassBar.org/SummerSocial1

WEDNESDAY, JULY 12, 5–7 P.M.
Storrowton Tavern, West Springfield
RSVP: MassBar.org/SummerSocial2

MBA’S YOUNG LAWYERS DIVISION
END OF SUMMER BOAT CRUISE

FRIDAY, AUG. 25, 6–8 P.M.
200 Seaport Blvd. #75, Boston
Tickets: $10
(Complimentary appetizers and drink tickets.)
Space is limited.
Reservations are required.
RSVP: MassBar.org/Cruise17

Introducing two new member benefits!

Rocket Matter is the leading innovative online legal practice management and time tracking software. Imagine running your law office in Mac, PC, iPad or Droid. Rocket Matter’s award-winning technology supports trust account management, time and expense keeping, case management, calendaring and much more. Rocket Matter software is employed by elite solo, small and mid-sized law firms to increase productivity and streamline billing. Its cloud-based technology features military-grade security and reliability. Manage your office from anywhere you can access the internet.

With Ruby Receptionists, you get a team of customer experience experts devoted to building trust with every caller making current and potential clients feel special while making you look good. Get Ruby’s legendary live service, a business phone number, and a comprehensive suite of features for a fraction of the cost of an on-site hire. Plus, MBA members receive 5 percent off their monthly plan! Visit MassBar.org/Membership to get started!

Member Appreciation Week recap

The MBA had a lot going on during the first week of April! We hope you were able to join us for one of our many member appreciation week events and conferences.

Apply for the 2017–18 MBA Leadership Academy by June 30

The Massachusetts Bar Association believes that exceptional leaders are essential to the improvement of our profession. However, there are few opportunities to train young attorneys on how to best lead firms and organizations. Therefore, the MBA recognizes its obligation as a statewide bar association to develop leaders who will work diligently toward the improvement of our profession and our society. In that regard, the MBA’s Leadership Academy will select, educate and mentor those who demonstrate leadership potential and attributes, and who will dedicate themselves towards these goals.

To learn more about the MBA Leadership Academy, and to apply, visit www.MassBar.org/LeadAcademy.

Thank you to our MBA sustaining members!

Sustaining members of the MBA demonstrate a high level of commitment to both the association and to the profession.

Martin S. Berman
Sandra JM Boulay
Judith Farns Bowman
Amanda Briggs
J. W. Curran Jr.
John J. Carroll Jr.
Burry R. Commins
Hon. Joseph M. Ditkoff
Benjamin H. Duppa
John Espinosa
Hon. Michael L. Fabbri
John B. Fleming
Francis A. Ford
Timothy Ellen Franklin
Alfred F. Goldstein
Davida J. Gomez
Elsie Gordon
Robert W. Harnais
John R. Harrington
Ray H. Hodge
Robert J. Helenkamp Jr.
Hon. Mark D. Horan
Susan A. Hurd
Stanley Keller
Elaine Gordon
Robert W. Harnais
John R. Harrington
Ray H. Hodge
Robert J. Helenkamp Jr.
Hon. Mark D. Horan
Susan A. Hurd
Janice C. Magno
Henry Lebensbaum
John R. Maziol
Hon. Bernice H. MacLeod
David R. McManus
Dennis J. Murphy
Kathryn L. March
Stephen A. Nelson
Janice C. Magno
Henry Lebensbaum
John R. Maziol
Hon. Bernice H. MacLeod
David R. McManus
Dennis J. Murphy
Kathryn L. March
Stephen A. Nelson
Janice C. Magno

Belong to something beneficial
We Could Have Settled It!

8/8/16   1:56 PM

Aviation Law

Attorney Glynn has been designated as a neutral for both non-binding mediation and arbitration; he has successfully managed those matters, either resolving/settling cases in mediation or rendering fair/equitable decisions at arbitration.

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Mediation and Arbitration of all Domestic Relations and Probate Matters

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ComCom Conference features bench-bar panels

The MBA’s Second Annual Complex Commercial Litigation Conference was held on April 6, at the Hyatt Regency in Boston. This year’s conference featured a keynote address from retired Supreme Judicial Court Justice Margot Botsford, along with three panels and a networking reception.

The IP panel, the Impact on Commercial Litigation One Year After the Defend Trade Secrets Act, featured U.S. Magistrate Judge Marianne B. Bowler (D. Mass.) and attorneys Russell Beck (Beck Reed Riden), Andrew O’Connor (Goulston & Storrs) and Damian LaPlaca (Devine Millimet, moderator).

The bankruptcy panel, which addressed Hot Topics Concerning Discovery Disputes and D&O Claims in Bankruptcy, featured U.S. Bankruptcy Judge Christopher J. Panos (D. Mass.) and attorneys Thomas S. Vangel (Murtha Cullina) and Christopher M. Condon (Murphy & King).

In the third panel, judges offered business litigation perspective “from the other side of the bench.” Panelists included Superior Court Judges Edward P. Leibensperger and Linda E. Giles, along with U.S. District Court Judge Timothy S. Hillman and retired Judge Stephen E. Neel, now with JAMS.

Thank you to the conference chairs for putting together this successful program, including, from left, Julie Green (Attorney General’s Office), Laurence A. Schoen (Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC), Lindsay M. Burke (Kenney & Sams PC) and John O. Mirick (Mirick, O’Connell, DeMallie & Lougee LLP).

Apply for the 2017-18 MBA Leadership Academy class

The Massachusetts Bar Association believes that exceptional leaders are essential to the improvement of our profession. However, there are few opportunities to train young attorneys on how to best lead firms and organizations.

Continuing its commitment to cultivating leaders who work diligently toward the improvement of our profession and our society, the MBA has developed a Leadership Academy to better prepare young attorneys to assume leadership roles at the bar, in their firms or organizations, and in government.

The MBA’s Leadership Academy — a 12-month program, which will run concurrently with the MBA membership year — starts in September 2017. Apply today to be a part of the 2017-18 class at www.massbar.org/leadacademy. Applications are due June 30, 2017. Academy curriculum will include educational programming, class projects and mentoring.

To be considered for inclusion in the MBA’s Leadership Academy, candidates should meet the following requirements:

- Active MBA member in good standing
- Three to 10 years of legal experience as a member of the bar
- Written nomination by an MBA member other than the applicant
- Submission of two letters of recommendation supporting the candidate’s professional and personal qualifications, MBA experience and commitment, and potential for future leadership at the bar
- Completion of the application
- Submission of a resume

Nominations for qualified candidates are welcome at leadacademy@massbar.org. Individuals chosen for the MBA Leadership Academy must commit to active participation in all MBA Leadership Academy activities, including quarterly programs.

Snapshots from around the MBA

Leadership Academy hosts session in Framingham

MBA Leadership Academy Fellows took part in a training session on April 27 in Framingham on the topic of “how to run a meeting.” Presenters included Probate and Family Court Chief Justice Angela M. O’Toole, Cumberland Farms Inc. Acting General Counsel Brian E. Glennon II and MBA President-elect Christopher P. Sullivan.
Members Helping Members: My Bar Access Q&A

**Q:** Is the best way to ask the Court for sole physical custody a Motion for Custody Pendente Lite, where temporary orders have already given physical custody to the other spouse?

Tanesha Wright

**A:** Hi Tanesha, I understand that the court has awarded temporary custody to the other spouse and your client wishes to challenge that order by seeking not only a reversal of that order, but that your client should be awarded sole physical custody. If that is true, then I feel you will need to show substantial evidence to reverse the existing temporary custody order.

Is there evidence of the existing custodial parent’s unfitness?

Did the court assign temporary custody based upon factors making the temporary custodial parent the “presumptive choice?” For example, was that spouse a stay-at-home parent while you client worked to bring home the money?

Does your client have any unfitness issues?

These are some of the considerations the court will likely explore.

William Driscoll, Law Office of William M. Driscoll, Chelmsford

**A:** I think since the current custody order is a temporary order, you do not need to file a complaint for modification. You can file a motion in the pending action. However, you do still need to demonstrate a change in circumstances affecting the best interests of the child.

Demetra Pontisakos, Esq., Attorney at Law, Salem

**A:** You need to file a complaint for modification in order to try to change the custody order and you will need to prove there exists a substantial change in circumstances since the earlier custody order.

E. Steven Coren, Esq., Kerstein Coren & Lichtenstein LLP, Wellesley

**A:** I agree with William and Demetra’s comments. It is also worth noting that there are other possible solutions for changing parenting plans that don’t involve returning to court.

Unless there is a fitness issue, both parents are going to be involved in the child’s life, whether the parenting plan “favors” one of the other with the “sole custody” moniker. Changes in temporary orders are not easy to obtain because the court has an obvious interest in discouraging people from coming back to court on Motions over and over. But circumstances change constantly with children and often the first parenting plan that parents try doesn’t work.

If you haven’t already, I would suggest encouraging your client to consider what their goals are for parenting, long term, and to find a forum for asking the other parent the same thing. In many cases, while parents may disagree about the exact schedule, they often agree about major goals — they want their child to be happy, healthy and successful. Parents who are able to resolve conflict rather than increase it generally have more healthy and successful children. So the means of resolving this issue is as important as the end, if both parents really have the best interest of their child in mind.

Parenting mediation, working with a co-parenting coordinator, or even conciliation, might allow these parents to explore where their interests overlap and may result in a more effective co-parenting relationship more focused on the child’s best interest instead of custody labels.

Justin L. Kelsey, Esq., Skylark Law & Mediation PC, Framingham

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Justin L. Kelsey, Esq., Skylark Law & Mediation PC, Framingham
Juvenile & Child Welfare Section hosts inaugural conference

The Massachusetts Bar Association Nominating Committee, led by MBA Immediate Past President Robert W. Harnais, has issued its report for the 2017–18 MBA officers and delegates announced. The committee was composed of Harnais, MBA Past President Marsh V. Kazarosian, MBA Past President Douglas K. Sheff, Susan G. Anderson, Francis A. Zarosian, MBA Past President Douglas K. Sheff, Susan G. Anderson, Francis A. Zarosian, MBA Past President Robert W. Harnais, and current MBA President Christopher P. Sullivan. Pursuant to Article VIII, Section 1 of the MBA Bylaws, the committee has made the following recommendations for the 2017–18 MBA officers and delegates:

- President-elect: Christopher A. Kenney
- President: Jonathan S. Karp
- Vice President: Lori A. Cianciulli
- Treasurer: John J. Hanrahan
- Secretary: Thomas J. Barbar
- Members-at-Large:
  - Region 1: Martin V. Tamascio Jr.
  - Region 2: Michael B. Ready
  - Region 3: Bridg E. Mitchell
  - Region 4: Jesse Adams
  - Region 5: Kyle R. Quirk
  - Region 6: Ian A. Coriell

The 2018 Jones Kelleher St. Patrick’s Day party is on!

Thank you to the program chairs for their efforts presenting this successful conference: Juvenile Court Judge Jay D. Blitzman (Middlesex County Juvenile Court-Lowell), Erica Cuchna (CPC/ YAD), Cristina Freitas (Freitas & Freitas LLP), Debbie F. Freitas (Freitas & Freitas LLP), Audrey Murillo (Dhar Law LLP) and Brian Pariser (Massachusetts Department of Children and Families).
Boston Globe’s Valencia honored for Excellence in Legal Journalism

The Massachusetts Bar Association presented Boston Globe courts reporter Milton J. Valencia with the Excellence in Legal Journalism Award at the April 27 Excellence in the Law event, presented by Massachusetts Lawyers Weekly.

The MBA-sponsored award is bestowed annually on reporters whose coverage of the legal system in Massachusetts reflects the commitment to truth and justice shared by both the bar and the press.

“The critical work of our courts only exists because there are so many who are better at demystifying our criminal justice system than Milton Valencia, who has probably spent more time in a courtroom than most lawyers,” said MBA Chief Legal Counsel and Chief Operating Officer Joseph M. Quinlan.

Valencia was part of the Globe staff team that won a Pulitzer for its coverage of the Marathon bombing. He also co-authored a three-part series on the secrecy of the immigration system that was named a finalist for national awards given by the Investigative Reporters & Editors and Harvard’s Nieman Foundation.

Before covering the courts, Milton was a general assignment reporter for the Globe. He also worked for the Telegram & Gazette in Worcester, the Herald in Fall River, and The Times of Pawtucket, Rhode Island, where he first ventured into covering the courts in the trial of former Providence Mayor Vincent “Buddy” Cianci. A native of Fall River, Valencia attended the University of Massachusetts system. He now lives in Canton.

Winners School wins MBA’s High School Mock Trial Championship

The Winsor School of Boston has been named State Champion of the Massachusetts Bar Association’s 2017 High School Mock Trial Program. The state title is the school’s fourth championship in the last five years and fifth state title since 2010.

As State Champion, the Winsor School qualified to represent Massachusetts at the National High School Mock Trial Championship in Hartford, Connecticut, May 11-13. A portion of their trip was funded by a $2,500 donation from the Massachusetts Bar Association’s philanthropic partner, the Massachusetts Bar Foundation.

The Winsor School and Newton North High School competed in a two-hour mock trial in Faneuil Hall’s Great Hall on March 24. In the fictional scenario at issue, the Winsor School represented the prosecution, the commonwealth of Massachusetts, and Newton North represented the defendant, a recent war veteran with post-traumatic stress disorder (PTSD) charged with first degree murder. The Winsor School was victorious in both the decision of the case and the overall scoring of the match.

This year’s judging panel for the state finals was Hon. Howard J. Whitehead (ret.), presiding justice, Massachusetts Superior Court; Hon. Kenneth V. Desmond Jr., Massachusetts Appeals Court; and Hon. Lisa Grant, Boston Municipal Court.

“I am humbled by the fact that I am playing a role in the continuing history of this great building,” said Judge Whitehead, in reference to the historic Faneuil Hall venue. “I congratulate the students on their outstanding performance. Every year it’s the same thing.”

Massachusetts Bar Association President Jeffrey N. Catalano provided welcoming remarks and encouraged students to continue using their advocacy skills to support just causes. “Take the advocacy skills that you have learned in this program and the passion you have for justice, and use that in whatever way you can in your life,” urged Catalano.

Started in 1985, the Massachusetts Bar Association’s Mock Trial Program began its 32nd year in January. The competition places high school teams from across the state in simulated courtroom situations where they assume the roles of lawyers, defendants and witnesses in hypothetical cases. More than 1,500 students at 132 high schools competed in this year’s competition.

The Mock Trial Program is administered by the Massachusetts Bar Association, with support from the Massachusetts Bar Foundation and Morrison Mahoney LLP. More than 100 lawyers across the state volunteer as coaches and judges.

ComCom sponsors roundtable on summary judgment motions

The Massachusetts Bar Association’s Business Litigation Practice Group of the Complex Commercial Litigation Section organized a panel discussion on “Summary Judgment Motions in the BLS” (Superior Court Business Litigation Session) on March 23. Panelists included (pictured from left to right): Nicholas D. Stellakis; Martin P. Gaynor III; Hon. Janet L. Sanders; and Hon. Mitchell H. Kaplan.

The live-streamed panel and answer bench/bar roundtable format, panelists addressed a number of timely questions for the BLS practitioner on the use (and sometimes overuse) of summary judgment motions.

HHS speaker highlights health law symposium

A keynote address from Massachusetts Undersecretary of Health and Human Services Alice Moore (pictured) served as a highlight of the 2017 Annual Health Law Symposium on April 7. The symposium also included two plenary sessions on medical malpractice, featuring Massachusetts Bar Association President Jeffrey N. Catalano, and Privacy of Health Care Information in the Practice of Law.

In addition to the plenary sessions, attendees were able to choose from three concurrent programming tracks dealing with issues in litigation, policy, and compliance and technology.

This year’s symposium was offered free of charge thanks to the generosity of sponsors Harbor One Bank and Seodule.

Thank you to all participating faculty members, and to program chairs Kathryn Rattigan (Robinson & Cole LLP) and Donald Whitmore (DEW Advisory).
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Andrés Avila, Colombia Insurance Law LLM

At the UConn Law, you will not only get a first rate legal education, you’ll be making connections you need to stay on top. We help you create a network both in your specialty area and in a wider range of legal perspectives.

Find the best part of you, and your love of the law, with the program that is right for you.


law.uconn.edu/llm
The Massachusetts Bar Association honored Sen- ate Ways and Means Chair Karen E. Spilka (D-Second Middlesex and Norfolk) with its Legislator of the Year Award at the May 4 Annual Dinner. Spilka was first elected to the Massachusetts House of Representatives in the fall of 2001, where she served three years before her election to the state Senate in January 2005. In the Senate she has served as the chair of the Joint Committee on Children, Families and Persons with Disabilities; the chair of the Joint Committee on Economic Development and Emerging Technologies; and the majority whip. Now to become a state senator, Spilka was chosen to receive the President’s Award at the May 4 Annual Dinner. The Massachusetts Bar Association honored MBA Past President David W. White Jr. of Breakstone, White & Gluck, LLP, with the MBA’s Legislator of the Year Award. White has long been a leader in the Massachusetts legal community. A partner at Breakstone, White & Gluck, White specializes in personal injury and insurance law.

Sen. Spilka honored with MBA Legislator of the Year Award

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White recognized with MBA President’s Award

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Sen. Spilka honored with MBA Legislator of the Year Award

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White recognized with MBA President’s Award

White recognized with MBA President’s Award

The Massachusetts Bar Association honored Past President David W. White Jr. with the MBA’s President’s Award at the May 4 Annual Dinner. The President’s Award is bestowed upon those individuals who have made a significant contribution to the work of the MBA, to the preservation of MBA values, to the success of MBA initiatives and to the promotion of the MBA’s leadership role within the legal community of Massachusetts.

A tireless advocate for lawyers and consumer rights, White has long been a leader in the Massachusetts legal community. A partner at Breakstone, White & Gluck, LLP, White specializes in personal injury and insurance law.

“David is someone who never stops giving back to the legal community,” said MBA President Jeffrey N. Catalano. “In the years leading up to and then following his presidency of the MBA, David has been generously giving of his time. In particular, his commitment to the leadership of the MBA’s Annual Disability Committee, which this year achieved unprecedented success, ensures that the MBA remains the commonwealth’s ‘Preminent Voice of the Legal Profession.’ I am so deeply grateful for his leadership and his friendship. This award is so well deserved!”

While serving as MBA president from 2007–08, White formed the Drug Policy Task Force, which made numerous recommendations for criminal sentencing reform and drug treatment in Massachusetts. He also led the Lawyers’ Eco-Challenge, encouraging law firms to fight global warming by changing their office energy use and recycling practices. He has been involved in several MBA section councils, educational programs and annual conferences.

Over the past 30 years, White has been honored numerous times for his achievements. He has been recognized on the Top 100 New England Super Lawyers list and the Top 100 Massachusetts Super Lawyers list. For the past 13 years, he has been consistently selected to the Massachusetts Super Lawyers list as a top personal injury lawyer for plain-vanilla. White & Gluck. He also received the President’s Award from the Massachusetts Association of Criminal Defense Lawyers in 2008.

In 2013, White led Breakstone, White & Gluck in launching its Project KidsSafe campaign, which has since donated more than 10,000 helmets to children in Massachusetts. For this work, White was recognized in 2014 as a Volunteer of the Year by Boston Bikes, a City of Boston program.

White is also commissioner of the Massachusetts Access to Justice Commission. He was appointed to this statewide commission in 2015. The commission is dedicated to improving legal services to Massachusetts residents in need.

A Westwood resident, White has served on numerous boards and commissions, and advocated for safety and preservation of open space. He founded the nonprofit Westwood Land Trust and currently serves on its board. He is also a member of the Westwood Democratic Committee. White is a past member of the Westwood Pedestrian and Bicycle Safety Committee and of the Westwood Sewer Commission.
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Celebrate the 2017 Access to Justice Award Honorees

The Massachusetts Bar Association’s Access to Justice Awards honored seven attorneys and one law firm, recognizing their exemplary legal skills and service to the community, at the 2017 Annual Dinner on May 4.

Defender Award
Rebecca Jacobstein
Committee for Public Counsel Services

As a staff attorney in the Appeals Unit of the Committee for Public Counsel Services, Rebecca Jacobstein has been relentless in the pursuit of justice for both his clients and thousands of others affected by the Sonja Farak drug lab scandal. When she joined the Appeals Unit in April 2014, she was assigned to represent on appeal Erick Cotto and Jeremiah Wansuh, who were both convicted drug offenses in which Farak, a chemist at the state drug lab in Amherst, conducted the chemical analysis. She has worked for three years on these appeals. Through her persistence and determination, one of the cases was recently dismissed; the second is awaiting a ruling on both a new trial motion based on Farak’s misconduct, as well as a motion to dismiss based on alleged prosecutorial misconduct.

Jacobstein acknowledges that in cases such as these, it’s important to have diligent public defenders who often function as a system of checks and balances for state prosecutors.

“In terms of indigent defense counsel, you need to have a counter weight to the government because they don’t always do what needs to be done,” said Jacobstein.

To hear the honoree in her own words on the MassBar Beat, visit https://soundcloud.com/user-786227478/defender-award-2017.

Prosecutor Award
Kevin J. Curtin
Middlesex District Attorney’s Office

Kevin J. Curtin is a 22-year veteran of the Middlesex District Attorney’s Office, where he currently serves as senior appellate counsel and grand jury director. He is widely respected for his work ethic and fairness, as well as his commitment to victims and the community he represents.

Curtin’s strong moral compass has guided him beyond his traditional prosecutorial role to take on more global issues of justice through his work with the Massachusetts Bar Association’s Civil Rights & Social Justice Section Council and the American Bar Association.

Last year, in the wake of a failed coup attempt by the Turkish military, Curtin was instrumental in getting the ABA to adopt an MBA-backed resolution condemning the Turkish government’s arrest of thousands of lawyers, judges and journalists in the country without charges or access to counsel. Earlier this year Curtin helped the MBA become the first state bar association to co-sponsor the ABA resolution that spoke out against the travel ban created by President Donald Trump’s executive order.

Curtin says he gravitates toward these issues because he believes standing up for justice is part of a lawyer’s professional duty.

“The Reverend Martin Luther King said that ‘injustice anywhere is a threat to justice everywhere.’ And I guess I agree with that,” says Curtin. “I love to see lawyers who have a passion for justice and are willing to act on it. ... Anytime a lawyer stands up for a worthwhile principle we’re all the better for it.”


Pro Bono Publico Awards
Andrew Troop
Pillsbury Winthrop Shaw Pittman
Christopher Mirick
Harvest Power Inc.

While colleagues at Pillsbury Winthrop Shaw Pittman, attorneys Andrew Troop and Christopher Mirick worked together with Greater Boston Legal Services (GBLS) to achieve successful outcomes in two notable pro bono cases.

In the first case, Troop and Mirick worked on behalf of 15 Chinese immigrant workers who were unfairly deprived of wages by a Boston daycare facility that attempted to discharge its workers — a sum that was originally $50,000, which tripled to $150,000 under the Massachusetts Wage Act. In the second case, Troop and Mirick represented the state attorney’s office in a multi-year appeal following the county’s decision to dismiss based on alleged prosecutorial misconduct.

“These of each clients [has] an absolute appreciation for the fact that our judicial system gives them a voice and pro bono gives them a way to use it,” said Troop.

“As lawyers we have a monopoly on providing legal advice — no one else can do it,” added Mirick, who now serves as senior vice president and general counsel at Harvest Power, Inc. “That monopoly gives us incredible power, but in my view it comes with an obligation to give back and to give access to that power and to that system to people who can’t afford it.”


Legal Services Award
Brian Flynn
Greater Boston Legal Services

Brian Flynn has been an attorney at Greater Boston Legal Services (GBLS) for more than 20 years. An expert in welfare and unemployment law, he has dedicated his career to advocating for low-income workers with disabilities and recipients of public benefits.

During his time at GBLS, Flynn has been a staff attorney in the Benefits Unit, a senior attorney in both the Welfare and Employment Law units, and is currently managing attorney of the Asian Outreach Employment Law Unit.

Flynn recently expanded his practice area to address wage and hour cases, resulting in several large settlements for immigrant workers who were not paid wages and legally required overtime payments. For the last two decades, Flynn has been a constant leading voice in the commonswealth for welfare and employment advocacy for some of the state’s most vulnerable populations.

He has been recognized for his unique ability not only to resolve individual cases, but to also identify and resolve systemic problems in the delivery of welfare and unemployment benefits.

“We have an obligation to look at every case with the knowledge that there might be five or 10 people, or more, with a similar problem, who we’re not going to see,” says Flynn. “I feel strongly that’s why it’s very important to do systemic advocacy based upon individual cases.”


Pro Bono Award for Law Firms
K&L Gates, Boston

Committed to providing pro bono services on a global scale, as well as locally through its Boston office, K&L Gates works on hundreds of pro bono cases each year.

In Massachusetts, the firm has been recognized for its work with the Kids in Need of Defense (KIND) program, representing unaccompanied minors who have fled violent situations in their home countries. Attorneys help separated families navigate the state court system, establish custody and guardianship, and guide them through U.S. citizenship and immigration services.

“The reward at the end of the case for the child and for their families is just enormous,” says partner Andrew Glass. “It’s hard to understand how happy the families are that they can remain united and that their child can escape the kind of violence that they often face.”

In addition, the firm works with the International Refugee Assistance Project to provide legal services on behalf of individuals from Iraq and Afghanistan who face persecution in light of providing service to the U.S. government during the wars in those countries.

K&L Gates also recently partnered with Veterans Legal Services to provide pro bono representation to veterans in need within the greater Boston area. Attorneys assist veterans, many of whom are homeless, with legal representation in civil cases.

“It’s often difficult for lawyers to find the time to devote to pro bono causes, but when the causes are the types of projects that we work on, it’s easy to find time,” says partner Sean Higgins.


Rising Star Award
Weyonoh Nelson-Davies
Community Legal Aid

A specialist in public benefits, housing and family law, Weyonoh Nelson-Davies serves as a staff attorney with Community Legal Aid in Worcester. Nelson-Davies oversees Community Legal Aid’s medical-legal partnership with UMass Memorial Health Care, working with clinical partners and medical providers to help represent low-income clients seeking pro bono assistance with special education needs, disability and public benefits, guardianship, and tenant’s rights. In this role, she trains providers and has seen firsthand how legal aid can make a difference in the lives of clients who have been denied access to various legal issues that contribute to an individual’s overall personal health.

Throughout the last year, Davies has been instrumental in facilitating a pro bono innovation grant from Legal Services Corporation, which helps provide on-site
A graduate of Roger Williams University School of Law and Rhode Island College, Nelson-Davies is a former Bart Gordon Fellow with South Coastal Counties Legal Services. Even at the early stages of her career, she has already developed a keen understanding of what’s at stake for her legal aid clients in their daily lives.

“In legal aid, as attorneys, we understand that we are sometimes the lifeline of our clients,” she says. “If we cannot win an eviction case, or negotiate for more time, or secure alternative housing for our client, they could be homeless.”


Rising Star Award
Claire Valentin
Children's Law Center of Massachusetts

Claire Valentin has always been interested in the overall immigration experience. With parents of Romanian and French descent, Valentin grew up in the U.S. with a green card and became a naturalized citizen during law school. She even put together her own naturalization application, but it ultimately got stuck in the system and was delayed. Valentin knew she wanted to help others facing similar immigration challenges.

“My own experiences and my family’s experience made me want to help other immigrants who were making the transition to a new life, and to help navigate what’s really a very complicated system and in a lot of ways a very unequal system,” says Valentin.

In her current role as a staff attorney at the Children’s Law Center of Massachusetts, Valentin advocates for unaccompanied immigrant children from Central America who flee their home countries seeking humanitarian protections in the U.S. Since 2013 she has been instrumental in transforming the organization’s Special Immigrant Juvenile Project, representing clients in state Juvenile and Probate Court, as well as in federal immigration proceedings.

A graduate of Brown University and Harvard Law School, Valentin is the recipient of Harvard’s Irving R. Kaufman Fellowship. While at Harvard she worked with the ACLU’s Immigrants’ Rights Project and the Georgia Legal Services Migrant Juvenile Project, representing clients in state Juvenile and Probate Court, as well as in federal immigration proceedings.

Since 2013 she has been instrumental in transforming the organization’s Special Immigrant Juvenile Project, representing clients in state Juvenile and Probate Court, as well as in federal immigration proceedings.

To hear the honoree in her own words on the MassBar Beat visit https://soundcloud.com/user-786227478/rising-star-award-cv-2017.

MBA presents scholarship to UMass Law student

The Massachusetts Bar Association is pleased to announce that Shayla Mombeleur, a third-year law student at the University of Massachusetts School of Law, Dartmouth received the MBA’s 2017 Oliver Wendell Holmes Jr. Scholarship at the MBA’s 2017 Annual Dinner.

Mombeleur has always been passionate about serving as a voice for indigent populations. That journey began in her hometown of Dorchester, where she too often saw her peers struggle with addiction and the instability of poverty.

While some around her made unfortunate choices and wrong turns in life, Mombeleur kept moving forward. As an undergraduate student at Bridgewater State University, she dedicated significant time to missionary efforts in Haiti, working to improve the lives of children at the H.I.S. Home for Children orphanage by providing them with vital everyday needs such as baby formula.

“These interactions honestly made me realize the opportunity I had in the United States—the opportunity to find my passion in life and to work hard in school so I could serve the same communities I grew up in,” said Mombeleur.

During her time at UMass Law, Mombeleur has served as a judicial intern for the Massachusetts District Court in both Taunton and Orleans and has also been an SJC Rule 3:03 Certified Student Attorney for the Bristol County District Attorney’s Office.

Being a dedicated advocate for civil rights has always come natural to Mombeleur. Upon graduation from law school, she hopes to serve those same communities she grew up in as a staff attorney for the Committee for Public Counsel Services or undertake a legal career for the American Civil Liberties Union.

Da Vinci School of Intellectual Property seeks local Adjuncts:

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For more information, contact us at moetteli@davincischool.com
Client loyalty: Who do you love?

BY RICHARD P. CAMPBELL AND SUZANNE ELOVECKY

While plainly obvious in most engagements, a lawyer representing large institutions and a lawyer hired and paid by third persons to represent other individuals (or corporate entities) immediately confront a fundamentally important task fraught with challenges and risks. A corporation or a lawyer may find the client’s officers and employees assuming that she represents their interest, and the relationship is also true. A lawyer hired and paid by a corporation to represent an officer or board member may find the corporation asserting its right to assert control over the representation.

The most frequent circumstance is the retention of a lawyer by an insurer to defend an insured, particularly in “excess exposure” and “contested coverage” cases. The retained lawyer must answer these questions: Who is the client? And who is not the client? Where does the lawyer’s loyalty lie? Can the lawyer compromise her fealty to her client at the direction of a third person who hired her, controls the litigation strategy and decision-making, and pays her fees?

Reflecting on the issue, Bo Didley’s classic 1950s rock song comes to mind. Bo Didley sang that he walked “47 miles of barbed wire” and “used a cobra snake for a necktie” to call out to Arlene: “Who do you love?”

The relationship between a lawyer and a client is almost always entirely consensual. The first steps, therefore, in determining who you love who, and who is not the client — where does the lawyer’s loyalty lie? Can the lawyer compromise her fealty to her client at the direction of a third person who hired her, controls the litigation strategy and decision-making, and pays her fees?

As the song continues, “I am a man of the law, and the law will not allow me to lie.” The standard of care for trial lawyers is founded on the simplest of propositions: “Loyalty is an essential element in the lawyer’s relationship to a client” (Comment 1, Rule 1.7, Conflict of Interest: General Rule). Every lawyer must abide by that tenet in all communications “before or within a reasonable time after commencing the representation” — the scope of the lawyer’s representation, as set forth by Rule 1.2(a), is the pursuit of “the lawful objectives” of the client “through reasonably available means permitted by law and these rules.” In pursuing the client’s lawful objectives, the lawyer must represent the client “zealously within the bounds of the law” (Rule 1.3). If the lawyer wishes to limit the representation, she may do so “if the client consents after consultation” (Rule 1.2(c)): “Any limits to the scope of representation, therefore, should be spelled out in detail in the written representation agreement.”

With regard to a corporate client, the lawyer “represents the organization” (Rule 1.13 (a)). The lawyer may also represent the corporate directors, officers and employees subject to the conflict of interest rule and only after obtaining the consent of the client (Rule 1.13(g) and Rule 1.7). There are no special exceptions (or “get out of jail free” cards) for lawyers retained and paid by third persons to represent the client.

In some — indeed, perhaps most — circumstances, the retained lawyer representing an insurer to represent an insured will have client-like responsibilities to the insured. As was true to the insurance so-called “tripartite relationship”). If the insurance-retained lawyer plans to limit the scope of her representation, therefore, she should forth with the details of the limitations in the representation agreement. Excess exposure cases (where the insured client faces the real possibility of a damages award greater in amount than the available indemnity on the insurance contract), reservation of rights or defense of coverage cases, and contests involving “wasting policies” (where the insured’s indemnity coverage limits are reduced by litigation fees and costs) put the insurance retained lawyer directly in the cross-hairs. When the lawyer confronts both an “excess exposure” and a contested coverage case, the client’s interest in ending the lawsuit quickly, efficiently and without the coverage benefit is magnified exponentially. Efficient resolution within coverage limits is particularly acute for a financially distressed client in a case of this type.

The most frequent circumstance is the retention of a lawyer by an insurer to defend an insured, particularly in “excess exposure” and “contested coverage” cases. The retained lawyer must answer these questions: Who is the client? And who is not the client? Where does the lawyer’s loyalty lie? Can the lawyer compromise her fealty to her client at the direction of a third person who hired her, controls the litigation strategy and decision-making, and pays her fees?

The standard of care for trial lawyers is founded on the simplest of propositions: “Loyalty is an essential element in the lawyer’s relationship to a client” (Comment 1, Rule 1.7, Conflict of Interest: General Rule). Every lawyer must abide by that tenet in all communications “before or within a reasonable time after commencing the representation.”

The scope of the lawyer’s representation, as set forth by Rule 1.2(a), is the pursuit of “the lawful objectives” of the client “through reasonably available means permitted by law and these rules.” In pursuing the client’s lawful objectives, the lawyer must represent the client “zealously within the bounds of the law” (Rule 1.3). If the lawyer wishes to limit the representation, she may do so “if the client consents after consultation” (Rule 1.2(c)): “Any limits to the scope of representation, therefore, should be spelled out in detail in the written representation agreement.”

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Many attorneys I know spend a significant portion of their day working in Outlook. If that’s true, keep reading. Here are 10 ways to help you use Outlook more effectively.

**Schedule Emails by Delaying Delivery**

While you may work 24/7 for your clients, do you really want them to think you are available at 3 a.m. on Saturday morning? I’d advise against it. Instead, use Outlook’s Delivery feature to schedule an email reminder to a client the day before they are due in court.

**Flag Outgoing Emails**

Most Outlook users are familiar with flagging incoming email for follow up purposes. But, did you know that you can also flag outgoing email? This is a great strategy when the response you need is time-sensitive. Rather than count on the recipient to respond in a timely manner, attach a flag and reminder for yourself to follow up with the recipient.

**Pin Emails to Your Inbox**

Most Outlook users have heard of flags, but have you heard of pins? And, what’s the difference? Flagging an email in Outlook adds the email to a list for follow up later. And, pins are flags, but have you heard of pins? And, pinning the email bypasses your inbox. Second, rules can help alert you to important information. For example, if you receive a daily Newsletter or a news alert, you can pin the email to your inbox and disguise content so that it isn’t essential on a daily basis. For example, create a rule for a Newsletter or alert and have it bypass your inbox and then save it to a folder. To review the pins, go to Rules and Create Rule to move emails received from the sender of the email to your Outlook pins folder.

Use Quick Steps to Run Workflows

Quick Steps are similar to Rules, but don’t run automatically. A Quick Step is a workflow that you run manually by clicking on that Quick Step. You can configure Quick Steps just like Rules. For example, you can receive messages from a sender every day, and then consider a Quick Step to run on your inbox to move all those messages to a certain folder. You could run this at the end of the day, rather than moving each message manually.

**Automate Repetitive Emails with Quick Parts**

Do you often send out the same email time and time again? Maybe it is a response to frequently asked questions from clients or a template email to a prospective client. Whatever it is, don’t waste your time by manually typing the text each time. Use Quick Parts to save the text. Then, next time you need that text, just click on the Quick Part you want to use.

**Save Client Folders as PDF Portfolios**

If you are not already archiving your client emails to a case management system, then you could use Outlook to look add-on to save the contents of entire folders as searchable PDF portfolios. By selecting a specific client folder in Outlook and creating a PDF portfolio, you’ll capture all the contained email messages and attachments.

**Drag and Drop Emails to Create a Calendar Entry**

When an email contains a deadline or appointment, rather than create a new calendar entry and copy that information to it, drag and drop the email onto your calendar. That action will turn the email directly into a calendar entry and the content of the email will appear in the notes field of the calendar entry.

**Learn Keyboard Shortcuts**

Use keyboard shortcuts for your most frequent Outlook actions. At the very least, use the following keyboard short cuts.
**Taking Care of Business**

**Your law practice has to add up**

**BY JOHN O. CUNNINGHAM**

In the last edition of this column, I mentioned that many corporate clients have surveyed want to talk about things other than fees and payments, and the client attention of a busy executive faster than mailing a letter or sending an email with an account statement.

**The Value of Replenishing Retainers**

Typically, a client pays the law firm an initial retainer, the lawyers begin working in the case, they exhaust the retainer, and before long, the client is billed on a month-to-month basis. By incorporating an agreement to replenish the retainer in the initial engagement letter, the firm is able to pay itself immediately upon performing the work. There are numerous billing software programs that firms can use to electronically monitor retainer balances.

**Don’t Forget to Text**

In today’s fast-paced, mobile world, sometimes the easiest and most effective way to get your client’s attention is by sending a text message. Clients expect to hear from their attorneys, and contact methods such as “Just following up on your last invoice in the amount of ‘X’,” might get the attention of a busy executive faster than mailing a letter or sending an email with an account statement.

**Settle on Payment Arrangements**

If it becomes necessary to accept a longer payment term than what was originally agreed to in the engagement letter, make sure to document the terms of the new arrangement. This can be done by sending an email to the client with the new terms and asking them to confirm via a reply email. Don’t forget to schedule regular follow up procedures for all collections and then periodically review your collection tactics and to analyze your performance against that of others in your industry, and they are being held accountable for their total legal budget projections.

As a result, sophisticated clients can get irritated when outside counsel balk at projecting legal costs, cycle times and ranges of outcomes for any given legal access to it expand exponentially. As Katz has explained, the storage cost for a gigabyte of information was $3300 in 1991 but was only cents by 2011. Similarly, the processors used to search information in 1971 were a million times slower than they were in 2011.

Thus, it is little wonder that in-house law departments are now using technology to subjectively the performance of both inside and outside counsel. Among other types of data, some corporations are tracking:

- Numbers of transactions handled by each lawyer according to subject matter and year
- Average size and range of settlements or cases handled by each lawyer
- Numbers of transactions handled by the number of matters a lawyer has handled in their industry
- A lawyer or law firm’s percentage of satisfied clients and client defection rates
- The demographic numbers on likely jury pools candidates by venue
- Average cycle time (the time from start to finish) by matter, case and lawyer
- Historical likelihood of success at or outside counsel, and find it difficult to get because few firms track such data:
  - Average historical costs per type of matter, jurisdiction or forum
  - Average times to complete or close of transaction
  - Historical likelihood of success at or prior to trial
  - Total number of matters a lawyer has handled by category
  - A range of likely recoveries or expenses based on past outcomes
  - The number of matters a lawyer has handled in their industry
  - A lawyer or law firm’s percentage of satisfied clients and client defection rates

By John O. Cunningham

Both sophisticated and general counsel and ordinary consumers want more data-based information, as Professor Daniel M. Katz has confirmed in his 2013 Emory Law Journal article about the growth of Quantitative Legal Prediction (QLP).

In my own experience interviewing sophisticated legal service buyers, I have learned that they want more of the following from outside counsel, and find it difficult to get because few firms track such data:

Some companies are also doing comparative measures of productivity and outcomes, pitting the performance of various outside lawyers against each other, and against alternative providers.

In-house law departments are also benchmarking their overall budget-management performance against that of other lawyers in their industry, and they are being held accountable for their total legal budget projections.

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Opinion world acts to obtain consensus on key opinion practices

BY STANLEY KELLER

Several years ago, the Working Group on Legal Opinions (WGLO) and the Legal Opinions Committee of the American Bar Association’s Business Law Section (the ABA Committee) undertook a joint project to identify selected aspects of customary practice and other practices applicable to third-party legal opinions that are commonly understood and accepted throughout the United States. Third-party legal opinions (or closing opinions) are typically delivered at the closing of a business transaction by counsel for one party to satisfy a condition of the other party’s obligation to close. Closing opinions are relatively concise, highly structured documents that provide professional judgments of the opinion giver regarding legal matters of concern to the recipient of the closing opinion. The joint project is an effort to foster a national opinion practice to facilitate the opinion process that will be widely recognized and endorsed.

The Project Committee examined the existing literature on legal opinions, including various bar reports, and focused on updating and amplifying the Legal Opinion Principles (53 Bus. Law. 831 (1998)) and the Guidelines for the Preparation of Closing Opinions (57 Bus. Law. 875 (2002)) developed by the ABA Committee. These efforts have resulted in preparation of a “Statement of Opinion Practices” designed to update the Principles and selected provisions of the Guidelines. An exposure draft was circulated for comment in mid-2016 and revisions were made in response to the comments received. The Project Committee has recently approved a revised version of the statement for submission to WGLO and the ABA Committee for their approval to be followed by distribution to various bar groups and others for approval.

The statement seeks, through its being broadly endorsed, to foster a national opinion practice with respect to those aspects of third-party opinion practice it addresses. It covers such topics as the application of customary practice to third-party opinions, the role of facts and assumptions and the law addressed by opinions, as well as key aspects of the opinion process. By using relatively concise and direct statements, it is designed to be easily understood by judges and juries who may be called upon to interpret opinions. It also is intended to serve as a common baseline for opinion givers and opinion recipients and their counsel to facilitate the opinion process.

The Massachusetts Bar Association’s Business Law Section, through its Section Council, has reviewed the Statement and requested the MBA itself to approve it. Along with the statement, the Project Committee has prepared a more concise statement called the Core Opinion Principles that is drawn from the statement and is designed for use for incorporation by reference in or as an attachment to an opinion letter by those who wish to do so. The Core Opinion Principles also has been submitted to the WGLO and the ABA Committee for approval and distribution to bar groups and others for consideration.

The completion and approval of the statement and the related Core Opinion Principles will be a significant accomplishment in itself. The Project Committee recognizes, however, that the statement does not cover everything that might be covered. Therefore, it is continuing to consider whether the statement might be expanded, including by developing over time a more comprehensive Statement that could replace both the Principles and Guidelines in their entirety, as well as by addressing additional opinion topics. This work is just beginning and there may be more to report on progress in the future.

Stanley Keller is of counsel in the Boston office of Locke Lord LLP where he focuses his practice on corporate and securities matters.
**DEATH OF AARON HERNANDEZ**

“Aaron Hernandez goes to his death an innocent man under the eyes of the law.” — MBA Chief Legal Counsel Martin W. Healy in the New York Times (April 19), describing the legal principle of abatement ab initio.

In the wake of the death of former New England Patriots player Aaron Hernandez, Massachusetts Bar Association legal experts were featured in dozens of stories locally and nationally across print, TV and radio. For example, MBA Chief Legal Counsel Martin W. Healy was quoted on the legal principle of abatement ab initio by the New York Times, Boston Globe, People Magazine, Springfield Republican, Associated Press, and ESPN’s Sports Center, among others. Peter Elikann, former chair of the MBA’s Criminal Justice Section, also appeared on New England Cable News/NBC Boston (along with MBA member Randy Chapman), and as a call-in guest on NightSide with Dan Rea on WBZ News Radio 1030.

“Shareholders must produce emails to and from counsel,” Massachusetts Lawyers Weekly (May 8) — David A. Parke, chair of the MBA’s Business Law Section, and MBA member Jeffrey J. Trapani were quoted in a story about a recent Superior Court ruling.

“Baker, prosecutors propose changes to wiretap law,” Boston Globe (May 2) — MBA Chief Legal Counsel Martin W. Healy provided commentary on privacy and civil rights concerns in relation to a proposed bill that seeks to modernize the state’s wiretapping law. Healy was also quoted by the Associated Press and the Springfield Republican.

“I-Team: Solar business owner heads to court to explain what happened to customer funds,” CBS Boston (April 27) — MBA member Frank Morrissey provided analysis from a bankruptcy perspective.

“Landlord-tenant bar busy tackling ‘legal pot’ issue,” Massachusetts Lawyers Weekly (April 24) — MBA members Kenneth A. Krems and Jordana Roubciek Greenman offered analysis of how the new recreational marijuana law has affected landlord-tenant issues.

“How convicted felon Kevin A. Perry Jr. bought up $2.2 million in property in four years,” MassLive.com (April 5) — MBA member Stephen J. Weymouth provided legal insight on this story involving a convicted Worcester developer and his real estate properties.

“Supreme Judicial Court says former speaker Thomas Finneran must lose pension,” Boston Globe (April 5) — MBA member Katherine A. Hesse offered her thoughts on a recent SJC ruling.

**DRUG LAB CASES**

The Massachusetts Bar Association issued a statement applauding the dismissal of thousands of tainted convictions as “justice over results.” The MBA statement and/or experts were cited in stories by the Boston Globe, New York Post, CommonWealth Magazine and the Boston Herald.

Quoted in the media? Let us know. Email JSally@MassBar.org.
Expanding enforcement: The developing field of cybersecurity

BY LAWRENCE G. CETHULO, ELIZABETH S. GIBSON AND BRIAN D. FISHMAN

It goes without saying that we live in a digital age, and that the analog is gone and buried. Digital information propels the modern economy, which is often called ‘the digital wave.’ Merriam-Webster defines ‘cyber’ as ‘relating to or involving computers or computer networks.’ As reliance on digital information grows, the risk that digital information will be compromised also increases. Digital information may be compromised through a ‘cyber incident’ or a ‘cyber breach.’ The term ‘cyber incident’ refers to unauthorized access to cyber data or private servers. A hacker who changes the homepage of a company’s website has caused a cyber incident. The term ‘cyber breach’ refers to the unauthorized acquisition or use of data. A hacker who steals Social Security numbers or credit card information from a company’s private server has committed a cyber breach.

In an effort to combat cyber breaches, Massachusetts and the federal government have increased enforcement of their cybersecurity laws. Many corporations have responded to increasing cyber threats by bolstering cybersecurity measures. Corporations failing to adequately protect against cyber incidents face potential litigation by consumers whose personal data is breached, as well as penalties by Massachusetts and federal agencies. Accordingly, attorneys advising corporate clients must be aware of cybersecurity best practices, as well as increased governmental cybersecurity enforcement efforts.

Cyber incidents on the rise and corporations bearing the cost

Cyber incidents are increasing throughputout the country. For example, in 2016, with 1,835 in 2015, as has the number of Massachusetts residents’ information compromised by those breaches. According to the Massachusetts Office of Consumer Affairs and Business Regulation, cyber incidents compromised the personal information of 950,000 Massachusetts residents in 2016. In 2015, cyber incidents compromised over one million Massachusetts residents’ personal information.

Cyber attacks are a growing menace to corporate America. There are more of them, and they are becoming more costly to corporations victimized by them. The British insurance, Lloyd’s, estimates that cyber attacks cost businesses over $400 billion globally each year, and Forbes Magazine estimates that the cost of cybercrime in the United States now reaches $2 trillion by 2019. Whether these costs are largely borne by corporations that maintain personal information of employees and customers, or are passed along to consumers, the impact on the global economy is potentially catastrophic. Breaches happen in a variety of sizes. Breaches may be large, like the January 2016 breach of healthcare company Cen
tene Corporation, in which the personal information of 950,000 Centene members was compromised. Smaller, but nonetheless costly breaches also plague corporations. Of the 135 breaches reported to the Massachusetts Office of Consumer Affairs and Business Regulation during the month of January 2017, 95 breaches affected five or fewer Massachusetts residents. Larger breaches, unsurprisingly, cost corporations more than smaller breaches. According to the independent research organization Ponemon Institute, data breaches of fewer than 10,000 records cost corporations on average $4.9 million in 2016, whereas breaches of greater than 50,000 records cost corporations an average of $11.3 million during the same time period. According to the Ponemon Institute, the average organizational cost to a business after a data breach was $7.01 million in 2016, whereas in 2015, the average organizational cost was $6.53 million. The average costs associated with each stolen record increased from $217 to $221 over the same period.

Corporations are increasing efforts to protect consumer information.

In response to the increased threat and cost of cyber attacks, many corporations have increased their focus on cybersecurity. According to the Ponemon Institute, corporations nationwide have increased their investment in active security, cyber hygiene, and cyber insurance. These investments include consultation with cybersecurity firms, conducting annual security assessments, and publicizing their efforts to bolster cybersecurity. According to the Wharton School, 80 percent of corporate boards of directors discuss cybersecurity at most meetings, and according to the website CFO.com, “[a] most three quarters (74 percent) of 160 public-company directors said their boards are concerned about the potential for cybersecurity threats.” Whereas, they were last year, and 80 percent have expanded their cybersecurity budget, by an average of 22 percent.

Corporations not adequately addressing cyber threats face increased penalties as the federal government increases enforcement of cybersecurity laws.

Massachusetts and the federal government have also increased their focus on cybersecurity. Federally, no single agency is tasked with cybersecurity enforcement. Rather, many federal governmental agencies regulate cybersecurity. The Securities and Exchange Commission (SEC) identifies cybersecurity as one of the greatest risks to investors. Accordingly, in 2017, the SEC announced an increased focus by its Office of Compliance Inspections and Examinations on cybersecurity compliance. In June 2016, the SEC announced that Morgan Stanley Smith Barney LLC agreed to pay a $1 million penalty to a $2 million charge for its failure to protect consumer information and failure to adopt written policies and procedures reasonably designed to protect cybersecurity, as required by 17 C.F.R. 248.30. Similarly, the Federal Trade Commission (FTC) has increased its focus on cybersecurity enforcement. Following the now-infamous breach of AshleyMadison.com (resulting in the 2015 theft of 36 million registered Ashley Madison users’ personal information), the FTC entered into a settlement with the FTC in which it agreed to pay $1.6 million, and to implement more robust data security practices to protect user information from hackers. The Ashley Madison case is one of the largest the FTC has investigated, although the FTC has investigated smaller matters as well. Since 2001, the FTC has charged 60 corporations for failing to reasonably protect consumers’ personal information. Acting FTC Chairman Maureen Ohlhausen has stated that the FTC has also increased its efforts to educate the public about closed cases and about the FTC’s data security expectations for corporations.

The Federal Communications Commission (FCC) has also made cybersecurity a priority. In the FCC’s Jan. 18, 2017, White Paper on Cybersecurity Risk Reduction, former FCC Public Safety and Homeland Security Bureau Chief David G. Simpson stated that the FCC’s cybersecurity oversight and enforcement efforts are “important component[s] of the [gov-

ernment’s] larger effort to protect critical communications infrastructure and the American public from malicious cyber ac-
tors.” Simpson further stated that the FCC is “actively working with [internet service providers] to address and minimize network vulnerabilities,” and is currently developing “voluntary industry-wide best practices that promote cybersecurity on specific areas that fall within the FCC’s purview.”

In addition to the above-described enforcement efforts, it is likely that Congress will enact new cybersecurity laws in response to increased cyber threats. Indeed, new bills relating to cybersecurity have been proposed, including the Active Cyber Defense Certainty Act (ACDCA). The ACDCA’s proponent, Rep. Tom Graves of Georgia, has stated that the Act “is about empowering individuals to defend themselves online, just as they have the legal authority to do during a physical assault.”

Similarly, the Massachusetts General Assembly has proposed new bills relating to cybersecurity. House Bill 3996 amends the Federal Computer Fraud and Abuse Act (18 U.S.C. § 1030) (CAFA) to permit so-called “hacking back” when an individual is the victim of a cyber attack. Specifically, the CAFA would permit victims to: (1) identify the perpetrators of an attack by accessing an intruder’s network; (2) disrupt ongoing attacks; and/or (3) report attacks to law enforcement. Currently, hacking back is illegal. The Department of Justice views hacking back as a violation of the illegal access without authorization provisions of the Computer Fraud and Abuse Act, as well as a threat to innocent parties, and a potential source of interference with ongoing governmental investigations.

Massachusetts will likely increase enforcement of its comprehensive cybersecurity laws.

Similarly, Massachusetts will likely increase enforcement of its already rather comprehensive cybersecurity laws and regulations. These include M.G.L. c. 9H (the Data Privacy Act), which obligates companies (and individuals) possessing Massachusetts residents’ personal information to notify the Massachusetts Attorney General and the Office of Consumer Affairs of any breach, and 201 C.M.R. 17.03, which obligates companies (and individuals) possessing such information to maintain certain safeguards, including a written information security program.

Massachusetts Governor Charlie Baker and Massachusetts Attorney General Mau-

ra Healey have consistently indicated that cybersecurity is a priority for the commonwealth, and are expected to increase efforts to ensure the privacy of information as cyber threats continue to grow.

Healey has stated that because “most any crime today involves some digital element,” cybersecurity is “from [her] perspective as attorney general … an issue that [she] actually lay[s] awake...
On March 6, 2017, the Massachusetts Supreme Judicial Court issued a decision that illustrates the limited remedies available to shareholders challenging the manner in which a corporation is operated. The case, Chokel v. Genzyme Corp., involved a duty of loyalty claim that the directors breached their fiduciary duties by failure to take actions to maximize the value of the corporation's stock and by agreeing to unreasonable deal protection provisions that discouraged the possibility of better bids. This action began as a direct suit against the corporation’s board of directors. The SJC held that the shareholders’ claim should have been brought as a derivative claim on behalf of the corporation, and not as a direct claim, against the directors. The court based its decision largely on the language of M.G.L. c. 156D, Section 8.30(a). Section 8.30(a) says that a director must discharge the director’s duties “(1) in good faith; (2) with the care that a person in a like position would reasonably believe appropriate under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interests of the corporation.” The court indicated that because these classes are conjunctive and conclude by requiring that the director’s actions must be in a manner reasonably believed to be in the best interests of the corporation, the directors’ duties run to the corporation, and not the shareholders. The court also indicated that a statement in a 2007 SJC decision (Chokel v. Genzyme Corp.), that directors owe a fiduciary duty to shareholders, was too broad. The court acknowledged that though reasonably restrictive agreements, the present in this case, where a director may have a direct duty to a shareholder. One involves close corporations, where Massachusetts common law recognizes that directors’ duties of loyalty run to shareholders. Another situation involves where a controlling shareholder/director relationship exists. As the court explained, “the loss from an unreasonably low merger price more directly harms the shareholders. Under the court’s decision, a shareholder’s lost value may not be directly recoverable in many situations.” This outcome contrasts with how a similar loss to shareholders of a Delaware corporation would be treated under Delaware law. In Tooley et al. v. Donaldson, Lufkin & Jenrette, Inc. et al., 845 A.2d 1023 (Del. 2004), the Delaware Supreme Court addressed a claim of loss by shareholders resulting from the directors’ action to delay a merger of the corporation. The Delaware court had to determine if the shareholders’ claim could only be made derivatively on behalf of the corporation, or could be made directly against the directors. The Delaware court held that the analysis must be based on the nature of the wrong and whether the relief should go to the shareholders or to the corporation. In the Delaware case, because there was no claim of injury to the corporation, the court found no basis to require shareholders to assert a derivative claim, rather than a direct, claim against the directors. It is interesting also to note that the Massachusetts Business Corporation Act differs from the Model Business Corporation Act with respect to some provisions relating to directors’ duties. The Model Act has language that indicates that directors have duties to both the corporation and its shareholders in sections dealing with standards of liability for directors and with the corporation’s right to have exculpatory provisions in its charter that limit the liability of directors. Such language in the Model Act, referring specifically to directors’ liability to shareholders, is missing from the Massachusetts Business Corporation Act. In addition, Section 8.30(a) of the Massachusetts Business Corporation Act has the unusual language, carried over from Chapter 150B, the older Massachusetts Business Corporation Law, which says that in determining what is in the corporation’s best interest, the directors may consider constituencies and factors other than the shareholders. It thus appears that some non-standard language in the Massachusetts Business Corporation Act led the court to limit the recourse of shareholders where, in other states, the shareholders would likely have direct claims arising from merger transactions.

BY DAVID A. PARKE

On March 6, 2017, the Massachusetts Supreme Judicial Court issued a decision that illustrates the limited remedies available to shareholders challenging the manner in which a corporation is operated. The case, Chokel v. Genzyme Corp., involved a duty of loyalty claim that the directors breached their fiduciary duties by failure to take actions to maximize the value of the corporation’s stock and by agreeing to unreasonable deal protection provisions that discouraged the possibility of better bids.

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The court indicated that because these classes are conjunctive and conclude by requiring that the director’s actions must be in a manner reasonably believed to be in the best interests of the corporation, the directors’ duties run to the corporation, and not the shareholders. The court also indicated that a statement in a 2007 SJC decision (Chokel v. Genzyme Corp.), that directors owe a fiduciary duty to shareholders, was too broad. The court acknowledged that though reasonably restrictive agreements, the present in this case, where a director may have a direct duty to a shareholder. One involves close corporations, where Massachusetts common law recognizes that directors’ duties of loyalty run to shareholders. Another situation involves where a controlling shareholder/director relationship exists. As the court explained, “the loss from an unreasonably low merger price more directly harms the shareholders. Under the court’s decision, a shareholder’s lost value may not be directly recoverable in many situations.”

This outcome contrasts with how a similar loss to shareholders of a Delaware corporation would be treated under Delaware law. In Tooley et al. v. Donaldson, Lufkin & Jenrette, Inc. et al., 845 A.2d 1023 (Del. 2004), the Delaware Supreme Court addressed a claim of loss by shareholders resulting from the directors’ action to delay a merger of the corporation. The Delaware court had to determine if the shareholders’ claim could only be made derivatively on behalf of the corporation, or could be made directly against the directors. The Delaware court held that the analysis must be based on the nature of the wrong and whether the relief should go to the shareholders or to the corporation. In the Delaware case, because there was no claim of injury to the corporation, the court found no basis to require shareholders to assert a derivative claim, rather than a direct, claim against the directors.

It is interesting also to note that the Massachusetts Business Corporation Act differs from the Model Business Corporation Act with respect to some provisions relating to directors’ duties. The Model Act has language that indicates that directors have duties to both the corporation and its shareholders in sections dealing with standards of liability for directors and with the corporation’s right to have exculpatory provisions in its charter that limit the liability of directors. Such language in the Model Act, referring specifically to directors’ liability to shareholders, is missing from the Massachusetts Business Corporation Act. In addition, Section 8.30(a) of the Massachusetts Business Corporation Act has the unusual language, carried over from Chapter 150B, the older Massachusetts Business Corporation Law, which says that in determining what is in the corporation’s best interest, the directors may consider constituencies and factors other than the shareholders.

It thus appears that some non-standard language in the Massachusetts Business Corporation Act led the court to limit the recourse of shareholders where, in other states, the shareholders would likely have direct claims arising from merger transactions.

BY DAVID A. PARKE

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It thus appears that some non-standard language in the Massachusetts Business Corporation Act led the court to limit the recourse of shareholders where, in other states, the shareholders would likely have direct claims arising from merger transactions.
Durational limits on alimony awards: When do the exceptions apply?

BY KATHERINE E. MCCARTHY

The passage of the Alimony Reform Act of 2011 (Alimony Reform) brought about sweeping changes to the alimony laws in Massachusetts. One major change was the implementation of durational limits on alimony awards. For marriages lasting less than 20 years, a formula is available to determine the length of time general alimony may be required.

The statute, M.G.L. c. 208 §45-55, contains language which allows the durational limits to be applied to alimony orders that predate Alimony Reform, providing many alimony payors with hope that their alimony obligation will be terminated. However, the statute also contains language which allows the probate and family court to deviate beyond the durational limits based on an “interests of justice” standard.

Since the passage of Alimony Reform, attorneys and clients alike have been left wondering how and when the “interests of justice” standard would be applied and what factors a court will consider in deviating from the durational limits. A recent decision by the Massachusetts Supreme Judicial Court provides some limited answers.

Deviation Beyond Durational Limits

Alimony Reform states that “[a]limony awards which exceed the durational limits established in [the law] shall be modified upon a complaint for modification without out additional material change of circum- stances unless the court finds that devia- tion from the durational limits is necessi- ted.” The court must then look to whether deviation is “required in the interests of justice.”

In a case of first impression, in No- vember 2016, the SJC decided in George v. George two important aspects of the de- viation standard. First, the alimony recipi- ent bears the burden of proving that devia- tion beyond the presumptive termination date is required in the interests of justice. Second, the judge must look at the cir- cumstances of the parties at the time the termination of alimony is sought, as op- posed to the circumstances of the parties at the time of the initial award of alimony.

Additional factors that may be con- sidered are the same statutory factors that judges must consider in making an initial alimony award. Those factors include:• Advanced age, chronic illness or un- usual health circumstances of either party. • Tax considerations applicable to the parties. • Whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse. • Whether the payor spouse has or can o- btain life insurance or other financial in- surance for the benefit of the recipient spouse and the cost of such insurance.

The court also made clear in its de- cision that it would not consider an ali- mony recipient’s argument that had they known that the alimony laws were going to change, or that durational limits would be applied, they would have negoti- ated for a larger property division in the original divorce. The SJC reasoned that if this argument were accepted by the courts, it would effectively prohibit any payors with alimony awards that predate Alimony Reform from terminating their alimony obligations under the law. In sum, accepting such an argument would nullify that portion of Alimony Re- form in direct contravention of the Legis- lature’s intent.

Takeaways

As in most cases in the probate and family court, the individual facts of the case are extremely important, however, the George case has provided some clari- fication of the statute that can be utilized to argue either for or against termination of alimony based on durational limits. In sum, if a payor has paid alimony beyond the durational limits, it is wise to consider the alimony recipient’s present circumstances in predicting how successful they will be in attempting to terminate the alimony obligation. Conversely, an alimony recipient must be cognizant that he or she will have the burden of establishing that deviation beyond the durational lim- its is appropriate in his or her case.

Interfamilial child sexual abuse: Expanded statute of limitations gives survivors until age 53 to file suit

BY DONALD G. TVE AND KRISTIN M. KNUUTILA

Tort law offers well-suited but un- derused remedies for victims of child sexual abuse within families, which is often exposed during divorce proceed- ings. Victims can achieve financial compensation for harms, assume a po- sition of control over legal claims ad- dressing the abuse and seek deterrence of an abuser’s abusive conduct, espe- cially when the abuser is a parent.

By now, most of us can recite the statistics: one in three to four girls and one in five to seven boys is sexuality abused before they turn 18. But what many may not know is that as many as 36 percent of child sexual abusers are parents or other family members. Yet, unlike exposer’s spilled across the front page of newspapers on the atroci- ties committed within the Catholic Church or at the nation’s elite board- ing schools, interfamilial sexual abuse remains a taboo topic that is relegated to the shadows. This article, which fol- lows on the heels of April’s Sexual As- sault Awareness Month, brings to light unique psychological issues that survi- vors of interfamilial child sexual abuse face. It then focuses on a recently amended law that expanded the statute of limitations for all child sexual abuse survivors and gave them until age 53 (and beyond) to process their abuse before accessing civil jus- tice.

A child who is sexually abused by a parent faces different challenges than a child abused outside of the home. These challenges may hinder an abused child’s ability to reveal the abuse and publicly confront her abusive parent not only when she is young, but also into adulthood. The very nature of the child-parent relationship makes it dif- ficult for a child to comprehend that she is being abused. A pedophile parent confounds his victim by acting like a normal, caring person at times, offer- ing encouragement at a sporting event, pecking his victim on the head as she leaves the house, and even telling her, “I love you.” In recent child sexual abuse case, a victim who was abused by her father testified, “He told me he loved me every single day, why would he do something wrong or something that would hurt me when every day he told me he loved me?” To further sow confusion, an abusive parent may try to normalize his actions. He may claim he is just “playing a game” or teaching his daughter “how to be a lady.”

A child who is sexually abused at home also has no real escape or time away from a parent to process the abuse. She wakes up each morning and eats breakfast with her abuser. She returns home to her attacker at the end of the school day. At night, she is gripped with fear, listening for his footsteps outside her door. To prevent disclosure, a sexually abusive parent may threaten his victim by saying that if she reveals the abuse, she will destroy the family. Until recently, a victim of interfamilial child sexual abuse had to do the impos- sible … and do it quickly. By age 21, or too. Countless claims were time-barred and victims were left without recourse. Many of the claims lodged against the Catholic Church, boarding schools and other institutions were only settled be- cause of public outrage sparked by the unrelenting efforts of local lawyers and the Boston Globe’s Spotlight Team. Despite being subjected to the most outrageous betrayal of all, victims of interfamilial child sexual abuse do not have a common enemy for lawyers and reporters to publicly expose.

Prior to being amended, the stat- ute of limitations for assault and bat- tery claims in child sexual abuse cases was three years past the victim’s 18th birthday or within three years of a vic- tim claiming the abuse to her injuries (so-called “discovery rule”). M.G.L. c. 260 §4C.

Since many survivors had not yet begun to process the abuse by age 21, this narrow window effectively cur- tailed civil lawsuits for valid sexual abuse claims. This was especially true for incest survivors, some of whom remained under an abuser’s control well into adulthood and were too traumatized to even consider confronting, much less suing, an abusive parent.

While the discovery rule extended the statute for three years after survi- vors causally connected the abuse to their damages, that deadline was tight, too. Countless claims were time-barred and victims were left without recourse. Many of the claims lodged against the Catholic Church, boarding schools and other institutions were only settled be- cause of public outrage sparked by the unrelenting efforts of local lawyers and the Boston Globe’s Spotlight Team. Despite being subjected to the most outrageous betrayal of all, victims of interfamilial child sexual abuse do not have a common enemy for lawyers and reporters to publicly expose.

After years of considerable pressure mounted by victims, advocates and lawyers, on June 26, 2014, the Mas- sachusetts Legislature expanded the scope of the law, extended the statute of limitations, and added the new statu- tute retroactively. M.G.L. c. 260 §4C. Survivors of child sexual abuse in Mas- sachusetts now have 35 years to file suit.>31
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Proposed rules for tax-exempt organizations and governmental agencies with deferred compensation plans

BY PATRICIA ANN METZER

Section 457(f) is a Special Tax Code Provision: One Adjustment to Certain Deferred Compensation Arrangements

A worker’s compensation will be deemed to have been deferred if, under the terms of a plan, he/she currently has a legally binding right to the compensation? If the employer has the unilateral right to terminate a worker’s services when the severance occurs, Benefits under so-called “window programs” and voluntary early retirement incentive plans are automatically treated as separation pay plans if the regulatory prerequisites can be met. What does “involuntary” mean? Essentially, a severance is involuntary if an employer exercises its unilateral authority to terminate a worker’s services when the worker was willing and able to continue to work and did not implicitly or explicitly request a severance. When a worker quits for “good reason,” the severance will be treated as involuntary if it can be shown that the reason for quitting was due to the employer’s part caused a material negative change in the worker’s relationship with the employer. In this context, it is good to show that the payments due because of a severance for “good reason” are equal (i) in amount to, (ii) payable in the same form as, and (iii) due at the same time as, benefits payable when an actual involuntary severance occurs. If the conditions of a regulatory safe harbor can be met, “good reason” will be presumed to exist.

When is a benefit not subject to a substantial risk of forfeiture and hence taxable?

Taxes will not be immediate if a worker’s benefits, when granted, are subject to a “substantial risk of forfeiture.” This concept appears in other Tax Code provisions. However, the proposed 457(f) provisions interpret the concept differently.

Entitlement must be conditioned on the future performance of substantial services or the occurrence of a condition related to a purpose of the compensation. In every case, the possibility of forfeiture means that the actual performance of the services and circumstances will determine whether a substantial risk of forfeiture exists. As an example of an enforceable written non-competition agreement, the employer makes reasonable efforts to verify compliance and at the time the agreement becomes binding, it can be demonstrated that the employer has a substantial and bona fide interest in preventing the services, and the worker has a bona interest in engaging in the prohibited competition and the ability to do so.

Another helpful aspect of the proposed rules is their recognition of rolling risks of forfeiture. As a general rule, a severance pay plan must meet the threshold requirements so that it may not extend a forfeiture condition after a worker becomes legally entitled to compensation. But the proposed regulations provide that, under certain defined circumstances, an employer can. As a threshold matter, the present value of the amount made subject to the non-foregoing efforts to verify compliance and at the time the agreement becomes binding, it can be demonstrated that the employer has a substantial and bona fide interest in preventing the services, and the worker has a bona interest in engaging in the prohibited competition and the ability to do so.

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past their 18th birthday — until age 53 — to sue an individual perpetrator, including an abusive parent. The statute now includes a reference to “actions in tort,” it is no longer limited to assault and battery claims as it was prior to the amendment. In Stiney v. Previtie, the Supreme Judicial Court upheld the constitutionality of the retroactive application of the statute, and acknowledged that: “[v]ictims often suffer injuries for decades after the physical actions of abuse occurred, and the extended statute of limitations provides the victims appropriate time to recall past acts and face the traumatic childhood events before he or she must take action.” Stiney, 473 Mass. 283, 292 (2015).

New Discovery Rule Further Expands the Statute of Limitations Beyond Age 53

The Legislature also expanded the discovery rule from three to seven years. M.G.L. c. 260 § 4C. Now, even survivors of incest and other child sexual abuse older than 53 may still have a viable claim for civil relief. Regardless of a victim’s age, the new discovery rule does not begin to run until a victim: 1) knows she was injured; and 3) links the abuse to her injuries. In other words, any child sexual abuse survivor who is older than age 53 should keep these factors in mind and include in their opposition delay in making a causal link. They should also include an expert affidavit establishing the reasonableness of the delay. Riley, 409 Mass. at 246. (“The reasonable person who serves as the standard … is not a detached, outside observer assessing the situation without being affected by it. Rather, it is a reasonable person who has been subjected to the conduct which forms the basis for the plaintiff’s complaint.”)

In determining whether the delay was objectively reasonable, courts have considered many factors, including the age of the victim at the time of the abuse, the perpetrator’s attempts to disguise it, and whether the abuse was a “watershed event” in that it dramatically affected the victim immediately. Doe v. Creighton, 439 Mass. 281, 283 (2002). Whether the plaintiff knew or should have known that the defendant’s actions were the cause of her injuries is a question of fact. Riley v. Prentell, 409 Mass. 239, 240 (1991). The question of whether a plaintiff’s claim is time-barred hinges on whether the abuse suffered was of such a nature that it would be objectively reasonable for a person in a similar situation to fail to make the causal connection between the abuse and the subsequent injuries. Riley, 409 Mass. at 245-46. (“The reasonable person who serves as the standard … is not a detached, outside observer assessing the situation without being affected by it. Rather, it is a reasonable person who has been subjected to the conduct which forms the basis for the plaintiff’s complaint.”)

With the passage of the amended M.G.L. c. 260 § 4C, survivors of inter-familial and other forms of child sexual abuse now have additional critical time to process the abuse and then determine whether to file civil claims against their perpetrators. Regarding the passage of the amendment, one survivor said, “With this long overdue move, we have finally succeeded in wresting power away from abusers who were largely protected under the old law. That power now resides with victims who can finally seek justice in the courts in order to heal and to shield more children from sexual abuse.” Coalition to Reform Sex Abuse Law. Press Release, June 26, 2014, www.coral.org.

FOOTNOTE

1. Section 4C also expands the discovery rule for negligent supervision claims, which is not discussed in this article.

Donald G. Tye is the co-chair of the Domestic Relations Practice Group at Prince Lobel Tye LLP in Boston. He has nearly 35 years of experience as an attorney, guardian ad litem, attorney for children, master, mediator, arbitrator, author and lecturer on family law matters. Tye has been recognized as one of the “Top 100 Massachusetts Super Lawyers.” He graduated from Tufts University and received his master’s in social work and J.D. from Washington University in St. Louis in a joint program.

Kristin M. Knuttila is a victim rights trial lawyer at Prince Lobel Tye LLP. She represents survivors of child sexual abuse and victims of sexual assault in civil litigation against family members and other individual perpetrators, public and private schools, and institutions. Knuttila has lectured at many conferences, often in reference to her success in obtaining a $10 million judgment for two clients who were sexually abused by their father. She serves as a pro bono attorney for the Victim Rights Law Center and sits on the Board for MassKids. Knuttila received her bachelor’s degree from Syracuse University in 1991 and her JD from Catholic University in 1996.

BAR SEEN

Snapshots from around the MBA

YLD members volunteer at Greater Boston Food Bank

The Young Lawyers Division hosted an MBA Volunteer Night at the Greater Boston Food Bank on March 29. Volunteers sorted 12,290 pounds of food and provided more than 9,000 meals.

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Considerations for employing teens legally and ethically in Massachusetts

BY DANIELA SOROKKO HARRIS

School holidays are just around the corner, and many Massachusetts businesses (particularly in the food service and retail industries) are preparing to hire teenagers for the summer. Historically, minors have been more perceptible of their rights and the outcomes of their labor market. They are protected by comprehensive federal and state child labor laws that regulate the terms and conditions of their work.

Similar to violations under the Wage Act, employers who violate Massachusetts’ child labor laws (codified M.G.L. c. 149, Sections 56 through 105) are held to a strict liability standard. That means that even if the employer acted in good faith or the minor employee suffered no economic loss or any other discernible injury, an employer that violates a child labor law will incur a civil fine (or even a criminal penalty). The best way to prevent such penalties is to fully understand and comply with child labor laws. Below are 10 topics that employers should be familiar with throughout the hiring and employment process of minors.

When is a minor considered an employee?

In Massachusetts, there is a well-established presumption that anyone who performs services for another, regardless of compensation, is an employee (as opposed to an independent contractor). This presumption extends to minors, who are afforded even greater rights and protections than adult employees with respect to health and safety standards and hourly restrictions.

Under the Fair Labor Standards Act (FLSA), which is the federal law establishing child labor standards, children under the age of 14 may not work. There are, however, a few exceptions to this rule that are applicable to Massachusetts employers, including:

- Babysitting or performing minor chores around a private home (any age);
- Delivering newspapers (must be at least 9 years old);
- Engaging in certain street trades, such as selling newspapers, shining shoes, or selling certain merchandise in public spaces (must be at least 12 years old); and
- Working in the entertainment industry. Employers must apply for a special waiver from the Massachusetts Attorney General, along with a $100 fee, to employ minors who are younger than 16.

How are child labor laws enforced?

Broadly speaking, both federal (FLSA) and state child labor laws apply to employers. However, when these laws conflict, the federal law is more protective of minors’ rights and will be enforced. In most cases, Massachusetts labor laws are stricter than their federal counterparts (the overtime rule for restaurant workers is a notable exception, discussed in question 5).

The U.S. Department of Labor’s Wage and Hour Division (WHD) enforces federal child labor laws. Employees may file a complaint by calling the WHD’s hotline, sending an email or visiting a local office.

In Massachusetts, the Attorney General’s Division of Fair Labor and Business Practices (aka, the Fair Labor Division) enforces state child labor laws. The Fair Labor Division has simplified the complaint process for child labor law violations, allowing anyone to report potential violations of child labor laws using an online form. Even an anonymous complaint may launch an investigation by the Fair Labor Division into a business’s employment conditions and payment practices.

Inspectors are required to visit and inspect businesses that employ minors to determine whether violations exist.

When are certain types of work prohibited for minors?

Yes. For a comprehensive summary of prohibited work activities, please consult the following guide from the Massachusetts Department of Public Health:


As a rule of thumb, minors may never use or be near hazardous machines, nor may they perform work that is potentially dangerous, such as demolition, construction and some manufacturing activities. In the restaurant and hospitality industry, it is important to remember that minors may not:

- Serve, handle or sell alcoholic beverages;
- Operate motor vehicles (with the exception of golf carts in certain circumstances); and
- If under 16, cook or work near open flames, work with power-driven food slicing equipment, bake, or work in freezers or meat coolers.

What are the restrictions to minors’ working hours?

The working hour restrictions vary depending on the employee’s age:

- 16- and 17-year-olds may:
  - Not work before 6 a.m. or after 10 p.m. on school nights (10:15 p.m. if establishment stops serving customers at 10 p.m.);
  - Work until midnight on non-school nights;
  - Not work more than eight hours per day or more than 18 hours per week during school weeks;
  - Not work more than eight hours per day, six days per week, or 40 hours per week, when school is not in session.

Regardless of whether it is a school night, an adult must supervise all minors after 8 p.m. There is a narrow exception for minors who work at a kiosk, cart or a stand in the common area of an enclosed shopping mall that has security after 8 p.m.

Certain exceptions apply in different industries. For example, minors employed on farms, hospital volunteers, and seasonal employees in manufacturing, hotels, and mercantile establishments may be exempt from the hourly restrictions listed above.

Do minimum wage, overtime and unemployment benefits requirements apply to minors?

Although most businesses must compensate minor workers as employees in accordance with federal and state wage laws, there are three narrow exceptions that allow employers to classify a minor worker as an “intern.” Workers may be considered interns if they are providing services to fulfill an educational or training program requirement; for a charity; or for a public-sector employer.

Regular employers that do not fall within one of the three exceptions must comply with all federal and state laws pertaining to minimum wage and unemployment insurance benefits. In Massachusetts, the minimum wage is $11/hour as of Jan. 1, 2017. However, wait staff and service employees may be paid the service rate of $3.75/hour if their average hourly tips, when combined with the service rate, are at least equal to the minimum wage.

Both state and federal laws require employers to be paid the overtime rate of 1.5 times their hourly pay for hours worked beyond 40 hours in a week, unless an exemption applies. Please note that while restaurant workers are exempt from overtime pay under Massachusetts law, they are not exempt under the FLSA. Accordingly, restauranteurs must pay minors overtime wages if they work more than 40 hours per week. (Keep in mind that only 16- and 17-year-olds are permitted to work more than 40 hours per week, and only up to 48 hours.)

Do minor employees require work permits?

Yes. All minors under the age of 18 must complete an employment permit application and obtain a permit before starting a new job.

Are there any posting requirements?

Employees should ensure compliance with the following posting requirements: employers must post the following notices in a conspicuous location within the minor’s work area; the schedule must show the start and stop times for each day of work, total hours worked per day, exact times of meal breaks, and total number of assigned work hours for the week; the schedule may not be changed once the workweek has begun; and employers cannot require minors to work during their scheduled time off.

Are minors eligible for worker’s compensation?

The Workers’ Compensation Act applies to minors who are injured on the job as it does to adults. However, minors are entitled to double compensation if the employer has violated the child labor laws.

What penalties might employers face for unlawfully employing minors?

The Fair Labor Division may issue a written warning or a civil citation to enforce child labor laws as an
At the Massachusetts Bar Foundation's Annual Meeting held on March 17, Chief Justice Ralph D. Gants was honored with the 2017 Great Friend of Justice Award. More than 190 MBF Fellows, grantees and friends attended the event held at the Social Law Library in the John Adams Courthouse in Boston.

The MBF's Great Friend of Justice Award is presented annually to an individual who has demonstrated extraordinary commitment to justice, consistent with the MBF’s values and mission of increasing access to justice in the state.

Before joining the Supreme Judicial Court in July 2014, Chief Justice Gants served for more than 11 years as an Associate Justice of the Massachusetts Superior Court, and was Administrative Justice of the Superior Court's Business Litigation Session in 2008. In presenting the award, MBF President Janet F. Aserkoff noted, “In all that you do, you demonstrate your commitment not only to increasing access to justice, but also to making sure that justice reaches every member of our commonwealth.”

MBF 2017 Annual Meeting honors Chief Justice Ralph D. Gants

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When a deferral first becomes taxable, how much is includible in income?

Determining the taxable amount when deferred compensation first vests, can be difficult. The proposed regulations tax the present value of deferred compensation on the first date on which there is a legally binding right to receive a benefit, or a moment of legally attributable to the worker, a worker will realize substantial risk of forfeiture lapses. The proposed regulations distinguish between violations committed with and without specific intent, which presumably affects the ultimate penalty amount.

What benefits are ultimately paid, will an additional tax be due?

Once a deferred amount has been taxed under Section 457(f), an additional tax will be imposed only when the benefit is actually paid or made available at a later time. It is worth noting that the proposed regulations discuss some less obvious circumstances under which deferred compensation will be deemed to have been paid or made available. These include a transfer or cancellation of a deferred benefit in exchange for benefits under a tax exempt welfare benefit plan or any other benefit exchange for gross income. Under these circumstances, the worker will be deemed to have constructively received cash.

When deferred compensation is actually or constructively paid or made available to a worker, a worker will realize additional income — determined by taking into account the amount on which he/she was previously taxed. The regulations in Tax Code Section 72 apply here, treating the deferred compensation plan like an annuity contract. The proposed regulations give an individual an “investment in the contract” which can be recovered tax-free ratably over the period of time. The proposed regulations make it clear that if a worker was entitled to an annuity under the contract for this purpose only if he/she actually reported the proper amount of income when his/her deferral first became subject to tax.

What happens if previously taxed benefits are never paid?

It is not beyond the realm of possibility that a worker will pay tax on deferrals under Section 457(f) that he/she never receives. The proposed regulations allow a worker to deduct a previously taxed amount that is never paid if he/she can demonstrate that the compensation is permanently forfeited under a plan’s terms or otherwise permanently lost. A permanent loss does not include an investment loss or an actuarial reduction in benefits if the worker retains the right to any payment under the plan. Essentially a benefit must become wholly worthless.

The most difficult part about this provision is that the deduction will be subject to the statutory limitations on miscellaneous itemized deductions.

How does 457(f) relate to Section 409A?

Another Tax Code provision dealing with the taxation of deferred compensation, Section 409A, addresses when deferral elections are made, and when and how payments under certain deferred compensation arrangements are made. Unfortunately, Sections 457(f) and 409A can both apply. This means that a footfall under 409A can trigger an additional 20 percent excise tax under Section 409A when deferrals not taxed under Section 457(f) are or become subject to 409A — for example, if 457(f) benefits are accelerated. The moral here is that, when putting together and administering a deferred compensation program for its workers, a tax-exempt organization or state or local government may need to satisfy the requirements of 409A to the extent they are different from those in 457(f).

When do the provisions in the proposed regulations take effect?

The provisions in the proposed 457(f) regulations, when finalized, will generally apply to compensation deferred for calendar years beginning after the Treasury Decision adopting the provisions is published in the Federal Register. The effective date is not entirely prospective. The final regulations will affect deferred amounts to which a legally binding right arose in prior calendar years that were not previously included in income. There are special deferred effective dates for collectively bargained and government plans. Also, before the regulations are finalized, taxpayers may rely in them.

Daniela Sorokko Harris is a Boston-based attorney who has worked for the Massachusetts Commission Against Discrimination and an employment law boutique firm. She is an alumna of Cornell University’s School of Industrial and Labor Relations and Boston University School of Law. In her first decade, she was employed as a child dancer for the New York City Ballet, and at the height of her teenage employment days worked as a banquet server, tennis instructor and SAT tutor.
How to become a mediator and incorporate mediation into your law practice

More and more litigants are choosing to resolve their disputes through mediation. This article explores how attorneys can incorporate mediation into their practice, and is a summary of the recent MBA program “How to Become a Mediator and to Incorporate Mediation into Your Practice.”

How and Why To Get Trained as a Mediator

This article explores how attorneys can incorporate mediation into their practice, and is a summary of the recent MBA program “How to Become a Mediator and to Incorporate Mediation into Your Practice.” It explains why mediation is an essential skill for mediators because it is required by statute, and provides information on how to become a mediator.

To Become A Mediator and Incorporate Mediation Into Your Law Practice

Once trained, there is no one “right way” to begin incorporating mediation into your law practice. Some areas of law, such as family law, may be more conducive to mediation while other practitioners, such as litigators, may find it more difficult to market themselves as mediators. Gail Packer, MSW, executive director of Community Dispute Settlement Center in Cambridge, says, “The reality is that a mediation career path is not paved. It requires creativity, ingenuity, and thinking about what area of practice to specialize in, and to develop a network to help pave the road for one’s future practice.” However, there are some general guidelines to think about as you begin incorporating mediation into your practice.

How to Incorporate Mediation Into Your Law Practice

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Attorney Justin Kelsey of Skylark Law and Mediation in Framingham, suggests that it is difficult to generate business as a mediator without broadening your practice as one that includes mediation. “Attorneys must actively market themselves as mediators, in both their firm name and on business cards, in order to bring in business.” Additionally, Kelsey recommends that an attorney may want to have different intake forms and conference room set-ups for mediation vs. litigation, because mediation requires a different environment to meet the parties’ needs. “Litigation is very fact-based whereas mediation is about openness. As a mediator, the attorney will want to foster collaboration.” He will want to provide a conducive environment for the parties to work together to reach a mutually agreeable solution.

There are many professional mediation organizations available to help new mediators get advanced training, find mentors, and gain experience, such as CDSC, MWI, and the Massachusetts Bar Association’s Dispute Resolution Section. Moreover, CDCS and MWI, among other mediation training centers, offer opportunities for new mediators to gain pro bono experience mediating cases, in a co-mediation model, including some opportunities in the courts.

Mediation services is an excellent addition to help you grow and expand your law practice as clients continue to look for more cost effective and less contentious ways to resolve their disputes. If you’re interested in learning more about incorporating mediation into your law practice and finding out about other resources, check out the program “How To Become A Mediator and Incorporate Mediation Into Your Law Practice” on the MBA’s On Demand portal.

Nicolette Crowley is an associate at Tucker, Saltzman, Dyer & O’Connell, LLP. Her practice focuses on insurance defense and coverage analysis.

Cynthia T. Runge is a divorce mediator, family and collaborative attorney who has practiced for over 26 years. Cynthia is a member of the Massachusetts Bar Association Law Practice Management Section; a member of the Board of Directors of the Massachusetts Council of Family Mediation; a member of the Access to Collaborative Committee, a project of the Massachusetts Collaborative Law Council; a member of the New England Association of Conflict Resolution, the Massachusetts Juvenile Bar Association, and the Massachusetts Guardianship Association.
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